



(FORMELY KNOWN AS PREM SOMANI FINANCIAL SERVICES LIMITED)
CIN: -L72100RJ1991PLC006220
(Incorporated under the Companies Act, 1956)
Contact No. 9322666532, Email Id: limitedpsfs@gmail.com
Website: <https://www.psfsl.co.in>

Date: March 29, 2024

To,

**BSE Limited,
Phiroze Jeejeebhoy Towers,
Dalal Street,
Mumbai – 400 001 (Maharashtra)**

Ref.: ACE ENGITECH LIMITED (ERSTWHILE PREM SOMANI FINANCIAL SERVICES LIMITED), Scrip Code: 530669, Security ID: ACEENGITEC.

Subject: Update on Scheme of Reduction of Ace Engitech Limited (Erstwhile Prem Somani Financial Services Limited) and their respective shareholders under Sections 66, 230 and any other applicable provisions of the Companies Act, 2013.

Ref: Disclosure under Regulation 30 of the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015

Dear Sir/Madam,

This is in continuation to our earlier communications with respect to the aforesaid Scheme of Reduction. This is to inform you that, the Hon'ble National Company Law Tribunal, Jaipur Bench, ("NCLT"/"Tribunal") has approved the Scheme of Reduction between Ace Engitech Limited (Erstwhile **Prem Somani Financial Services Limited**) and their respective shareholders under Sections 66, 230 and any other applicable provisions of the Companies Act, 2013 read with National Company Law Tribunal (Procedure for reduction of share capital of Company) Rules, 2016. vide its order dated March 28, 2024 ("Order").

We are enclosing herewith copy of the said order for your reference and records. Certified copy of the order is still awaited by the Company.

The Scheme shall be effective after the receipt of the certified copy of the order from NCLT and its consequent filing with the Registrar of Companies, Rajasthan, Jaipur.

You are requested to kindly take the same on record.

Yours faithfully,

**FOR ACE ENGITECH LIMITED
(ERSTWHILE PREM SOMANI FINANCIAL SERVICES LIMITED)**

ANKITA
AGARWAL

Digitally signed by
ANKITA AGARWAL
Date: 2024.03.29
17:56:08 +05'30'

**Ankita Agarwal
Company Secretary & Compliance officer
Membership No.: -A-33873**

Email: aceengitechlimited@gmail.com

Encl.: a/a

Registered Office: Flat No. 408, Second Floor, Anand Chamber, Baba Harishchandra Marg, Raisar Plaza, Indira Bazar, Jaipur-302001, Rajasthan

IN THE NATIONAL COMPANY LAW TRIBUNAL
JAIPUR BENCH

**CORAM: SHRI DEEP CHANDRA JOSHI,
HON'BLE JUDICIAL MEMBER**

**SHRI RAJEEV MEHROTRA,
HON'BLE TECHNICAL MEMBER**

CA No. 04/JPR/2023,
Ivn. P (CA) No. 02/JPR/2022 &
CP No. 27/66/JPR/2022

(Under Section 66 of the Companies Act, 2013, read with National Company Law Tribunal (Procedure for Reduction of Share Capital of Company) Rules, 2016)

IN THE MATTER OF:

ACE ENGITECH LIMITED

...Petitioner

MEMO OF PARTIES

CA No. 04/JPR/2023 & CP No. 27/66/JPR/2022:

ACE ENGITECH LIMITED

Formerly known as (Prem Somani Financial Service Limited)

Flat No. 408, 2nd Floor, Anand
Chamber, Baba Harish Chandra
Marg, Raisar Plaza, Indira Bazar,
Jaipur-302001 (Rajasthan)

...Petitioner

Ivn. P (CA) No. 02/JPR/2022:

NAWNEET SOMANI

224, Lane No. 7, Guru Jambeshwar
Nagar A, Gandhi Path, Queens Road,
Vaishali Nagar, Jaipur- 302021
(Rajasthan)

...Applicant No. 1

*Ivn. P(CA) No. 02/JPR/2022,
CA No. 04/JPR/2023 &
CP No. (IB)- 27/66/JPR/2022*




**SARITA SOMANI**

224, Lane No. 7, Guru Jambeshwar
Nagar A, Gandhi Path, Queens Road,
Vaishali Nagar, Jaipur- 302021
(Rajasthan)

...Applicant No. 2**FIRST CHOICE STOCK BROKERS PVT. LTD.**

C/o Nawneet Somani
Opposite Piramal Girls Hr. Sec. School,
P.O. Bagar- 333023 (Rajasthan)

...Applicant No. 3**SOMANIS JEWELLERS LIMITED**

Earlier: Somani Securities Limited
224, Lane No. 7, Guru Jambeshwar
Nagar A, Gandhi Path, Queens Road,
Vaishali Nagar, Jaipur- 302021
(Rajasthan)

...Applicant No. 4**PREM SOMANI SHARE BROKERS PVT. LTD.**

224, Lane No. 7, Guru Jambeshwar
Nagar A, Gandhi Path, Queens Road,
Vaishali Nagar, Jaipur- 302021
(Rajasthan)

...Applicant No. 5**VERSUS****ACE ENGITECH LIMITED**

Formerly known as (Prem Somani Financial Service Limited)
Flat No. 408, 2nd Floor, Anand
Chamber, Baba Harish Chandra
Marg, Raisar Plaza, Indira Bazar,
Jaipur-302001 (Rajasthan)

Non- Applicant

FOR THE APPLICANT : Amol Vyas, Adv.
Danish Akhtar

FOR THE INTERVENOR : Naresh Kumar Sejvani, Adv.

Order Pronounced On: 28.03.2024

ORDER

Per: Shri Rajeev Mehrotra, Technical Member

1. The main Petition bearing *CP No. 27/66/JPR/2022* has been filed on 29.08.2022 by *M/s. Ace Engitech Ltd (Formerly known as Prem Somani Financial Services Limited)* ('the Company') through *Mr. Dinesh Kumar Bohra*, Director and Chief Financial Officer and *Ms. Priya Gupta*, Company Secretary & Compliance Office. An Affidavit in support of the Petition has been sworn by *Mr. Dinesh Kumar Bohra* and *Ms. Priya Gupta* and the same is annexed with the Petition along with the Board Resolution dated 28.05.2022. The Petition is filed under Section 66 of the Companies Act, 2013 (hereinafter referred as the "Act") read with National Company Law Tribunal (Procedure for Reduction of Share Capital) Rules, 2016 seeking permission of this Tribunal to the Scheme of Reduction of Equity Share Capital ('the Scheme'). The Petition seeks *inter alia* the following prayer(s):

- I. That the reduction of capital resolved on by the Special Resolution set out in paragraph 10 of the present application above be confirmed;*
- II. That to this end, all directions necessary and proper be made and given;*
- III. That the proposed minutes be approved; and*
- IV. That such further or other orders be made in the premises as to the Tribunal shall deem fit.*



2. The Company is a Public Company having CIN L72100RJ1991PLC006220 incorporated on 25.09.1991 registered under the provisions of the Companies Act, 1956. The registered office of the Company situated at Flat No. 408, 2nd Floor, Anand Chamber, Baba Harish Chandra Marg, Raisar Plaza, Indira Bazar, Jaipur-302001. The Authorized Share Capital of the Company is Rs. 7,00,00,000/- (Rupees Seven Crores Only) divided into 70,00,000 (Seventy Lakhs Only) Equity Shares of Rs. 10/- each (Rupees Ten Only). The Paid-Up Share Capital of the Company is Rs. 3,30,34,000/- (Rupees Three Crores Thirty Lakhs Thirty-Four Thousand Only) divided into 33,03,400 (Thirty-Three Lakhs Three Thousand and Four Hundred Only) Equity Shares of Rs. 10/- each (Rupees Ten Only). The shares of the Company are listed in Bombay Stock Exchange, now known as BSE Limited.
3. It is submitted that *Article 16 of the Articles of Association* empowers the Company to reduce its Share Capital from time to time. The said Article is reproduced as under:

“The Company may from time to time by special resolution reduce its share capital in any way authorized by the Act and in accordance with the Rules reduce:

- (a) its share capital; and/or*
- (b) any capital redemption reserve account; and/or*
- (c) any share premium account; and/or*
- (d) any other reserve in the nature of share capital.”*



4. As per Audited Balance Sheet for the Financial Year ending on 31.03.2021, the Total Revenue from the operations of the Company was Nil and Total Income of the Company was Rs. 6,97,662/- (Rupees Six Lakhs Ninety-Seven Thousand Six Hundred and Sixty-Two Only). The accumulated losses for the year ended on 31.03.2021 stood at Rs. 2,71,68,622/- (Rupees Two Corers Seventy-One Lakhs Sixty-Eight Thousand Six Hundred and Twenty-Two Only) which has wiped off the entire net worth of the Company. Further heavy losses in its Financial Statements are making it difficult for the Company to raise new resources for expansion or modernization.
5. It is submitted that the Special Resolution of the Company was passed in accordance with Section 66(1) of the Act at the Annual General Meeting ('AGM'), which was held after notice, in accordance with the provisions of Companies Act, 2013, on 11.07.2022 for approving the reduction of Equity Share Capital of the Company. The purpose of reduction is to write off part of the Debit balance in the Profit and Loss Account to the extent of Rs. 2,71,68,622/- (Rupees Two Crores Seventy-One Lakhs Sixty-Eight Thousand Six Hundred and Twenty-Two Only) by reduction of Share Capital. The AGM was attended by 34 members and the voting pattern for the members are as follows:

Promoter/ Public	No. of shares held (1)	No. of votes polled (2)	% of votes polled on outstanding shares (3) = [(2)/ (1)] *100	No. of votes in favour (4)	No. of votes against (5)	% of votes in favour on votes polled (6) = [(4)/ (2)] *100	% of votes against on votes polled (7) = [(5)/ (2)] *100
Promoter and promoter group	9,20,600	9,20,600	100.00%	9,20,600	0	100.00 %	0.00%
Public- Institutional Holders	1,50,000	1,50,000	100.00%	1,50,000	0	100.00 %	0.00%
Public- others	22,32,800	1,65,780	7.42%	1,65,780	0	100.00 %	0.00%
Total	33,03,400	12,36,380	37.42%	12,36,380	0	100.00 %	0.00%

6. A copy of Scrutinizer Report submitted by the scrutinizer to the AGM held on 11.07.2022 is filed with the Petition. The Resolution passed in the AGM is reproduced below:

“RESOLVED THAT pursuant to the provisions of Section 66 and other applicable provisions of the Companies Act, 2013 read along with National Company Law Tribunal (Procedure for Reduction of Share Capital) Rules, 2016, including any amendment or reconstitution thereof (“hereinafter referred as the Act”), the relevant provisions of the Memorandum and Articles of Association of the Company and the other applicable laws, rules, regulations, bye-laws as the case may be; and subject to the requisite approvals of the shareholders of the Company and to the necessary consents, permissions and approvals of the Securities and Exchange Board of India (SEBI), Stock Exchange(s) where the securities of the Company are listed and any other statutory or regulatory authorities and subject to the sanction of the Hon’ble National Company Law Tribunal (“NCLT”) of appropriate Jurisdiction and subject to all such conditions and modifications as may be prescribed or imposed by any of the aforesaid authorities while granting such approvals, permissions and sanctions, which may be agreed to by the Company, the consent of the Board be and is hereby accorded to the Draft Scheme for Reduction of Share Capital (“the Application”) of the Company.

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RESOLVED FURTHER THAT Audit Committee, at its meeting held on October 30, 2021 have considered and has recommended the Draft Scheme under Section 66 of the Companies Act, 2013 involving Reduction of Share Capital.

RESOLVED FURTHER THAT in compliance with the SEBI Circular CFD/DIL3/CIR/2017/21 dated March 10, 2017, for the purpose of approval under Regulation 37 of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 ("Listing Regulations") and coordinating with SEBI, the Board of Directors of the Company be and are hereby designate "BSE Limited ("BSE") as the Designated Stock Exchange for the purpose of Reduction of Share Capital.

RESOLVED FURTHER THAT the Board approves the Auditor Certificate obtained for the non-applicability of Para 9 under Para (1)(A)(9)(a) of Annexure 1 of SEBI Circular No. CFD/DIL3/CIR/2017/21 dated March 10, 2017.

RESOLVED FURTHER THAT the Board of Directors of the Company be and is hereby authorized, in its absolute discretion, to bring into effect the resolution on such other terms and conditions as it may consider appropriate and to accept such other conditions and modifications as may be prescribed by the NCLT and other appropriate bodies/authorities while according their sanction or consent to the Capital Reduction or to suspend, withdraw or revive the proposal for Capital Reduction from time to time as may be specified by any statutory authority or as the Board may Suo-moto decide in its absolute discretion. "

7. The Scheme proposes that upon coming into effect, the accumulated losses of Rs. 2,71,68,622/- (Rupees Two Crores Seventy-One Lakhs Sixty-Eight Thousand Six Hundred and Twenty-Two Only) will be set off to the extent of the Share Capital cancelled, i.e. 74% of Rs. 3,30,34,000/- (Rupees Three Crores Thirty Lakhs Thirty-Four Thousand Only) which will be Rs. 2,44,45,160/- (Rupees Two Crore Forty-Four Lakhs Forty-Five Thousand One Hundred and



Sixty Only), w.e.f. appointed date. The Scheme seeks to reduce or otherwise alter the issued, subscribed and paid-up share capital of the Company from Rs. 3,30,34,000/- (Rupees Three Crores Thirty Lakhs Thirty-Four Thousand Only) divided into 33,03,400 (Thirty-Three Lakhs Three Thousand and Four Hundred) equity shares of Rs. 10/- (Rupees Ten Only) each to Rs. 85,88,840/- (Rupees Eighty-Five Lakhs Eighty-Eight Thousand and Eight Hundred and Forty Only) divided into 8,58,884 (Eight Lakhs Fifty-Eight Thousand Eight Hundred and Eighty-Four) equity shares of Rs. 10/- each (Rupees Ten Only). The accumulated losses of Rs. 2,71,68,622/- (Rupees Two Crores Seventy-One Lakhs Sixty-Eight Thousand Six Hundred and Twenty-Two Only) will be set off to the extent of the share capital cancelled, i.e., 74% of Rs. 3,30,34,000/- (Rupees Three Crores Thirty Lakhs Thirty-Four Thousand Only), which amounts to Rs. 2,44,45,160/- (Rupees Two Crore Forty-Four Lakhs Forty-Five Thousand One Hundred and Sixty Only). Consequently, every shareholder of the Company whose name appears in the register of members on the record date shall be issued, in the proportion of their holding in the company, from a total of 8,58,884 (Eight Lakhs Fifty-Eight Thousand Eight Hundred and Eighty-Four) equity shares of the face value of Rs. 10/- (Rupees Ten Only) each fully paid-up.



8. In furtherance of the requirements of the provisions of the Act, it is contended that there are no qualification, observation or remarks or disclaimer made by *M/s. Rajvanshi & Associates*, Chartered Accountants, Statutory Auditor of the Company in their Report. Further, there are no pending inspection, inquiry or investigation against the Company under the Companies Act, 2013. Copy of the Annual Return for the year 2020-2021 is duly annexed with the Application. Furthermore, the certificate of the Statutory Auditor states that the Company has not accepted any deposit from the public within the meaning of Section 73 & 76 or any other relevant provision of the Companies Act, 2013. Also, as on the date of this Petition, the Company has not defaulted in repayment of deposits nor the Company has been in arrears in repayments of the deposits.
9. The Company confirms the accounting treatment contained in the Scheme is in compliance with SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 and all applicable Accounting Standards as applicable to a Company. It is submitted that Securities and Exchange Board of India and Bombay Stock Exchange have given their respective No Objection Certificates to the Scheme.
10. The Petitioner filed Written Submissions vide Dairy No. 2832/2022 on 22.09.2022. As per the Annual Financial Statement for the last three years, the Company has no reserves and surplus. The Audited Balance Sheets of the



Company for the year ended 31.03.2022, 31.03.2021 & 31.03.2020 shows continuous negative balance of reserves and surplus. Copy of the Financial Statements for the financial year ended on 31.03.2022, 31.03.2021 & 31.03.2020 have been duly annexed with the Written Submissions.

11. Notices were issued to the Central Government, Registrar of Companies, SEBI and its creditors pursuant to order dated 23.09.2022. The Affidavit of Service was filed by the Applicant *vide* Dairy No. 3260/2022 dated 04.11.2022.
12. Meanwhile, an Intervention Application numbered as *Inv. P(CA) No. 02/JPR/2022*, was filed *vide* Dairy No. 3397/2022 dated 18.11.2022 under Rule 11 of the National Companies Law Tribunal Rules, 2016 seeking dismissal of petition on the following grounds:

12.1. The Company was incorporated under the name and style of *Prem Somani Financial Services Limited* by the *Somani Family*. The Intervention Application has been filed by *Mr. Navneet Somani, Mrs. Sarita Somani, M/s First Choice Stock Brokers Pvt. Ltd., M/s Somani Jewellers Limited* and *M/s Prem Somani Share brokers Pvt. Ltd.* ('Intervenors') who were the Associates Companies and Promoters within the meaning of Section 2(6) & 2(69) of the Act. The Intervenors contended that they were the Directors of the Company, however, since 2018-19, owing to family disputes, *Mrs. Prem Lata Somani's* family



with malafide motives, started disassociating the associates' companies, misappropriating the assets and properties of the Company and saddled the financial statements by creating bogus and sham book entries thereby leading to negative balance in the books of accounts. It is alleged that the new management has taken over the board of the Company.

12.2. It is further submitted that as per the Annual Return of the Company till 31.03.2020, *Mr. Navneet Somani, Mrs. Sarita Somani* and *Somani Jewellers Limited (Earlier Somani Securities Limited)* were categorized under promoters' group, however, in recent past years, the controlling management removed their names from the promoter's category and violated Section 92(1)(e) of the Act. Consequently, by violating Section 92(1)(e) of the Act, the controlling management also failed to comply with the Regulation 31A of the SEBI (LODR Regulations) and without following the due process under the law, the promoter's category was re-classified without prior approval of the members.

12.3. It is further alleged that the Company has violated Sections 66 and 101 of the Act. Section 66 of the Act stipulates that a company limited by shares and having share capital, may reduce its share capital by passing a special resolution. Additionally, the notice of the meeting shall be in

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accordance with Section 101 of the Act. It is submitted that the Intervenor being the shareholders of the Company, collectively hold 119500 (One Lakh Nineteen Thousand and Five Hundred Only) equity shares and as per mandate of Section 101 of the Act, notice ought to be served upon the Intervenor. However, no notice of the AGM held on 11.07.2022 was served to any of the Intervenor, which amounts to clear violation of the provisions of the Act.

12.4. It is also alleged that the Company violated Sections 96, 108 and 114 of the Act. The Resolution dated 11.07.2022, purportedly passed to approve the reduction of share capital, was an attempt to defraud the Minority Shareholders and Intervenor herein. The Promoter Group have direct interest in the alleged resolution and thus, by virtue of section 174, 184 and 188 of the Act, they are debarred from participating and voting in the meeting. Further, when the votes of the Promoters are excluded, the resolution stands defeated as the Intervenor, holding 119500 equity shares, are not in favour of the resolution. This was the reason, the management had excluded the Intervenor from Promoter's category.

12.5. Additionally, the Company had the investments of 19.89% in *M/s Somani Jewellers Limited* till 31.05.2015; 19.43% in *M/s First*



Choice Stock Brokers Private Limited till 31.05.2015; and 42.10% in *M/s Prem Somani Share Brokers Pvt. Ltd.* till 31.03.2017 and these companies were shown as Associate Companies in accordance with section 92(1)(a) of the Act. It is submitted that these shares held were illegally transferred on 28.03.2016 and 26.03.2018. Owing to the dispute under Section 241-242 of the Act, a Company Petition numbered as *CP No. 122/59/241-242/JPR/2020* is pending adjudication before this Tribunal. The Company in order to evade the filing of the Consolidated Financial Statements as required under Section 129 read with Section 134 of the Act had illegally shown investments to have been sold, thereby violating Sections 129 & 134 of the Act. In addition, the transfer of investments requires special consent of the members in the General Meeting, however, no prior consent has been obtained resulting in violation of Section 180 & 188 of the Act.

- 12.6. Also, the Audited Financial Statements reveal that the Company had significant investments in various other entities. However, the book value of the investments was shown to be lesser than the market value of such investments. The Company also had residential property from which the controlling management was fetching rental income but the same was sold by the controlling management to themselves in



individual capacity at price lower than the market value. The Company also violated Section 134 and 145 of the Act as the Board is required to give the justification and explanation towards the qualification report by the Statutory Auditor, however, no explanation or justification over such remarks of Statutory Auditor have been provided by the Board.

- 12.7. The Intervenors prayed for declaring the AGM dated 11.07.2022 as null and void and to annul the resolution passed therein. In addition, the Intervenors seek relief for comprehensive investigation/ inquiries through office of Enforcement Directorate (ED) or such other competent authority in the affairs of the Company.
13. The Petitioner filed a Company Application numbered as *CA No. 04/JPR/2023* under Rule 11 of NCLT Rules, 2016 read with Rule 3(3) of NCLT (Procedure for Reduction of Share Capital of Company) Rules, 2016 seeking directions for publication of notices in Form No. RSC-4 in two newspapers. The Tribunal vide Order dated 13.03.2023 directed issuance of notices in two newspapers one English and one vernacular language newspaper i.e., '*Financial Express-Jaipur Edition*' and '*Dainik Navajyoti*' respectively inviting representations, if any, within three months from the date of publication of the notice. An affidavit of *Mr. Dinesh Kumar Bohra*, has been filed vide Dairy No. 132/2023 dated 17.01.2023, wherein it annexed the NOC issued by the Creditors i.e. *Mr.*



Satyavijay Gangaram Lokegaonkar and *Mr. Kamlesh Ramkumar Verma*. In addition, copy of NOC received from Statutory Auditor has also been filed. The said was taken on record *vide* Order dated 13.03.2023. Further an affidavit evidencing dispatch and publication of Notice has also been filed *vide* Dairy No. 944/2023 dated 12.04.2023.

14. The Representations from the Office of the Regional Director- North Western Region have been received *vide* Dairy No. 1039/2023 dated 24.04.2023 stating as below:

14.1. In the present matter, the notice should be served to Income Tax Department for compliance of Income Tax Act.

14.2. The Company has to put on record that it has complied with the observation letter dated 13.05.2022 issued by BSE.

14.3. As per the NCLT order dated 13.03.2023, the publication of notice is required to be published as soon as may be, but not later than 7 days, however, the Company has published on 03.04.2023 which is not within the stipulated time period.

14.4. The publication in vernacular language newspaper (*Dainik Navajoyti*) on 03.04.2023 has error in amounts published and thus the Company shall publish the corrigendum with regard to publication of notice in RSC-4.

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15. The Petitioner submitted Reply to the Intervention Application *vide* Dairy No. 2121/2023 dated 29.08.2023 contended the following:

15.1 With respect to non-service of the notice of AGM, it is submitted that out of the 5 applicants, 2 applicants namely *M/s First Choice Stock Brokers Pvt. Ltd.* and *M/s Prem Somani Share Brokers Pvt. Ltd.* are not shareholders of the company as on record date and the same has been confirmed by *Alankit Assignments Limited*, Registrar and Transfer Agent (RTA) of the Company.

15.2 Regarding the allegations related to the prior management, it is submitted that all these issues had already been raised when the letter of offer was issued by *M/s Zyden Technologies Pvt. Ltd.*, being the Acquirer of 8,58,884 Equity Shares of the Target Company i.e. the Petitioner. Further, SEBI did not take cognizance of any of the objections raised by the Intervenors herein and issued an approval of the Public Offer *vide* its Letter dated 24.12.2020. Copy of the Letter dated 24.12.2020 is enclosed and marked as Annexure-R/2. It is also pertinent to note that the aforesaid raising of issues was disclosed in its Letter of Offer, which was published by the Acquirer. Copy of the 'Letter of Offer' issued by the acquirer is enclosed and marked as Annexure-R/3. As such, it is clear that the issues raised by the



Intervenors does not relate to the reduction of share capital and have no bearing on the present manner.

15.3 Presently, the Intervenors are mere shareholders and do not fall in the category of the Promotor. As per section 2(w) of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, a promoter and promoter group shall have the same meaning as assigned to them respective in clauses (oo) and (pp) of Sub-Regulation (1) of Regulation 2 of the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2015. The definition would show that a promoter is a person who has control over the affairs of the Company directly or indirectly. In the present case, the entire control and management of the company is with the new management and the Intervenors are merely Shareholders in the company.

15.4 The provisions of Section 2(6) are not applicable qua the Petitioner company as the ingredient for being an associate company is missing in the present case and therefore, none of the Intervenors is an associate of the petitioner company. Furthermore, as per Section 2(69), a person can be described as a Promoter only when he is having control over the affairs of the company directly or indirectly whether as a shareholder,



director or otherwise. In the instance case, none of the shareholders command control over the affairs of the Petitioner Company. As such, it is clear that none of the Intervenors is a promoter even as per the definition of section 2(69) of the Companies Act, 2013. The Intervenors filed a Company Petition under Section 59, 241, 242 and 244 of the Companies Act, wherein the affairs of the *Prem Somani Share Brokers Pvt. Ltd.* have been under challenge.

15.5 The Petitioner Company has also been impleaded in the aforesaid Company Petition, whereby it has been alleged that that the Petitioner Company illegally transferred the shares of *Prem Somani Share Brokers Pvt. Ltd.* on 26.08.2023. It appears that the Intervenors were unable to get an order from this Tribunal in the petition under section 241 & 242, hence, for the purpose arm twisting they sought to raise the objections for the events which took place in 2018. The allegations were made on the erstwhile management of the petitioner company, as the Intervenors itself says the erstwhile management has sold the listed entity after evacuating the entire assets of the company, and entirely a new management has come on board. From the aforesaid, it is clear that Intervenors have grievances against the erstwhile management of the Petitioner Company for the events which took place in the year 2018.



15.6 It is submitted that the present management is not concerned about the activities undertaken by the erstwhile management. The aforesaid position was also made clear in the Letter of Offer sent to the shareholders of the Petitioner Company in the year 2021. It is also pointed out that the Intervenor No. 1 had earlier during the open offer filed its objections and sought to intervene in the open offer given by the management to acquire the petitioner company but SEBI did not pay any heed to the aforesaid objections and approved the open offer given by the new management.

15.7 Also, the record pertaining to the holding of AGM on 11.07.2022 through video conferencing (VC)/ other Audio-Visual Means (OAVM) has already been put forth along with the Scrutinizer Report which shows that the meeting was held in accordance with the provisions of section 66 and 101 of the Companies Act, 2013 read with NCLT (Procedure for Reduction of Share Capital of Company) Rules, 2016. Furthermore, even SEBI vide its Circular dated 13.05.2022 has relaxed the requirement of sending the hard copy of annual report and financial statements for the year 2022 along with all the documents prescribed under section 136 of the Companies Act, 2013 for the listed companies.

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15.8 It is submitted that as per the record of the company, the Intervenor never registered their Email IDs with the RTA and as such, there is no requirement of sending of notice of AGM to the Intervenor. A bare perusal of the scrutinizer's report would show that in compliance of Circulars issued by the Ministry of Corporate Affairs, the company has published the advertisement in the *Financial Express* (English Newspaper) and *Nafa Nuksan* (Vernacular Language Newspaper) specifying all the necessary details. In view of the aforesaid, the Intervenor neither registered their Email IDs with the company nor participated in the AGM and therefore, cannot be allowed to challenge the AGM. Also, in compliance of the SEBI Circular issued from time to time and lastly on 13.05.2022, the RTA of the Petitioner Company completed dispatch of notice of AGM on 17.06.2022 by emailing the same to 232 members, who had already registered their Email IDs with the Company/Depositories. It is also submitted that in view of the clause (v) of sub rule 4 of Rule 20 of the Companies (Management and Administration) Rules, 2014, the company has also released advertisement, which was published more than 21 days before the date of the AGM in *Financial Express* (English Newspaper) and *Nafa-Nuksan* in Vernacular Newspaper on 18.06.2022.

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15.9 There are total number of 2962 Shareholders as on the cutoff date, holding 33,03,400 Equity Shares which participated in the AGM. Out of the aforesaid promoters hold 9,20,600 shares, Public- Institutional Shareholder hold 1,50,000 shares and Public 22,32,800 shares. It is pertinent to note that Item No. 3 in the Agenda contained the Special Resolution which provided for reduction of equity share capital of the company and 100% shareholders casted vote in favour of the resolution. It is clear that the holding of the Intervenors would not have any material effect on the fate of the Resolution as even assuming that all the Intervenors would have voted against the resolution, then also, only 3.49% of Shareholders would have voted against the Special Resolution whereas the mandate required for passing the aforesaid special resolution is only 75%. It is further submitted that the Intervenors have already lost their position as promoter once the 'letter of offer' was approved by the SEBI and the target company was acquired by the present management.

15.10 Further, after the open offer was approved by SEBI and shares of the target company were acquired under Regulation 3(1) and Regulation 4 and other applicable Regulations of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011. The Intervenors are no more



promoters of the petitioner company and therefore, there is no requirement of putting the Intervenors in the promoter category. The allegations by the Intervenors that some of the Intervenors were associate companies of the petitioner is no more res-integra for the reason that after the 'Letter of Offer' and acquisition of shareholding by the acquirer of the shares of the target company, the Intervenors are no more associate companies. Furthermore, the aforesaid events relate to the year 2018 and therefore, have no relevancy with the present petition.

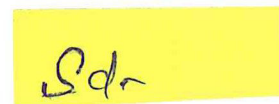
15.11 The Company Petition filed under Section 241 of the Act has nothing to do with the present petition, more particularly when a petition under Section 241 pertains to a family dispute between the *Somani's* and the petitioner company is now under new management. The issues raised are the subject matter of another petition and therefore, the same cannot be raised in the present petition. It may also be noted that the allegations do not pertain to the new management and it is only pertaining to the family dispute of *Somani's* in the year 2016 & 2018. The new management is not concerned about the earlier dispute and the said fact is also mentioned in the Sale Purchase Agreement which was approved by the SEBI.



15.12 The investment in 18 entities by the petitioner company was recorded in the books of account in line with the provisions of Indian Accounting Standard. It is clarified that the shares have not been transferred at a price less than the market price, however, the market price of the shares was Zero, but still the same were sold at a price more than the market value. Further, the profit / loss booked by the Company on sale of the aforesaid shares was in compliance with the AS-40. The old promoters were on the board of the Company till 31.03.2021 and therefore, whatever happened during their tenure was in the notice of the earlier management and the same has been done with the consent of the old management.

15.13 The property was sold by the old management to *Smt. Neetu Singh* at a valuable consideration, who is complete stranger to the Company. Moreover, aforesaid transaction has nothing to do with the new management of the Company. Copy of the sale deed of the Flat No. D-147, Durga Apartment, Durga Marg, Jaipur is enclosed and marked as Annexure-R/7.

16. The Applicant has submitted Reply Affidavit to the Representation of RD *vide* Dairy No. 3097/2023 dated 28.12.2023 which is as follows:





- 16.1. The BSE, being the stock exchange where the shares of the company are listed, has already given its No Objection to the Scheme of Reduction of Share Capital.
- 16.2. There is no requirement under the provisions of the Companies Act, 2013 as well as in the Rules relating to the Reduction of Share Capital to issue notices to the Income Tax Department for the reason that the company continues to remain in existence and the scheme does not in any way affect the income tax liability, if any of the company.
- 16.3. The Petitioner company has no arrears of repayment of deposit and interest thereon. Furthermore, the Petitioner Company is not an NBFC nor the same is registered with the Reserve Bank of India.
- 16.4. As far as the clerical error in the publication made in the Hindi Newspaper (*Dainik Navajyoti*) on 03.04.2023 with regard to the amount of reduction of paid-up share capital is concerned, the Petitioner Company has already published a corrigendum in the same newspaper.
- 16.5. It is submitted that the applicant company is not aware of any cases filed by the Registrar of Companies as the company has not received any summon/notice from any Court. Moreover, the Petitioner Company has already filed a compounding application before the Regional Director and the same has been compounded at the time when the erstwhile

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management was handling the affairs of the company. For this reason, the Petitioner Company has not received any kind of notice from the Economic Offence Court.

17. The Applicant has filed Written Submissions vide Dairy No. 628/2024 dated 12.03.2024 reiterating the contentions mentioned earlier and relied on the judgment of the Hon'ble NCLAT in *Brillio Technologies Private Limited vs. Registrar of Companies, Karnataka and Ors, Order dated 19.04.2021*. In addition, the Petitioner submitted the Order passed by the Regional Director regarding the compounding of offences.
18. We have heard the Ld. Counsels for the parties and perused the averments made in the Petition, Reply, Rejoinder, Written Submission, Applications along with the documents enclosed therein.
19. As per the submissions, the Petitioner Company has incurred huge operating losses amounting to Rs. 2,71,68,622/- (Rupees Two Corers Seventy-One Lakhs Sixty-Eight Thousand Six Hundred and Twenty-Two Only) as on 31.03.2021, which comprises of losses on account of business operations. In order to ensure that the financial position of the Company reflects the current position of the Company, the Petitioner Company is of the view that the accumulated losses shall be wiped off.



20. Accordingly, the Petitioner Company has decided to write off the losses. For the purpose of the same, the Scheme proposes that upon coming into effect from the appointed date, the accumulated losses of Rs. 2,71,68,622/- (Rupees Two Crores Seventy-One Lakhs Sixty-Eight Thousand Six Hundred and Twenty-Two Only) will be set off to the extent of the cancelled share capital, i.e. 74% of Rs. 3,30,34,000/- (Rupees Three Crores Thirty Lakhs Thirty-Four Thousand Only). The Scheme seeks to reduce or otherwise alter the issued, subscribed and paid-up share capital of the company from Rs. 3,30,34,000/- (Rupees Three Crores Thirty Lakhs Thirty-Four Thousand Only) divided into 33,03,400 equity shares of Rs. 10/-each to Rs. 85,88,840/- (Rupees Eighty-Five Lakhs Eighty-Eight Thousand and Eight Hundred and Forty Only) divided into 8,58,884 equity shares of Rs. 10/- each. The accumulated losses of Rs. 2,71,68,622/- (Rupees Two Crores Seventy-One Lakhs Sixty-Eight Thousand Six Hundred and Twenty-Two Only) will be set off to the extent of the share capital cancelled, i.e., 74% of Rs. 3,30,34,000/- (Rupees Three Crores Thirty Lakhs Thirty-Four Thousand Only), which amounts to Rs. 2,44,45,160/- (Rupees Two Crore Forty-Four Lakhs Forty-Five Thousand One Hundred and Sixty Only). Consequently, every shareholder of the Company whose name appears in the register of members on the record date shall be issued, in the proportion of their holding in the company, from a total of 8,58,884 (Eight

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Lakhs Fifty-Eight Thousand Eight Hundred and Eighty-Four) equity shares of the face value of Rs. 10/- (Rupees Ten Only) each fully paid-up.

21. We are of the view the entire control and management of the Company is with the new management and the intervenors are merely holding 3.49% shares in the Petitioner Company. Further, as per Section 2(w) of SEBI (LODR) Regulation, 2015 r/w Regulation 2(1)(oo) and 2(1)(pp) of SEBI (ICDR) Regulation, 2015, the Intervenors are not the Promoters in the Company. It is further observed that the Intervenors neither registered their email IDs with the Company nor participated in the AGM and therefore, cannot be allowed challenge the validity of AGM. In this regard, we have noted the report filed by RTA evidencing dispatch of notice of AGM on 17.06.2022 by email to 232 members, who had already registered their email IDs with the company /depositories.
22. The Scheme of Reduction of Share Capital has to be in accordance with Section 66 of the Act read with National Company Law Tribunal (Procedure for Reduction of Share Capital) Rules, 2016. According to Section 66(1) of the Act the Scheme of Reduction of Share Capital is to be approved by the Special Resolution passed in a duly convened meeting of the members. We observe that the Special Resolution has been passed in the AGM dated 11.07.2022 approving the Scheme of Reduction of Equity Share Capital. Furthermore, it is



noted from the certificate of the statutory auditor, annexed as Annexure 7 with the Application, that the Company has not accepted any deposit from the public within the meaning of section 73 & 76 or any other relevant provision of the Companies Act, 2013 and as on the date of this Petition, the Company has not defaulted in repayment of deposits nor the Company has been in arrears in repayments of the deposits. The notice contained Item No. 3 in the agenda providing for Special Resolution for the approval of the Scheme and 100% shareholders have cast vote in favour of the Resolution. Therefore, the provisions of Section 66(1) are duly followed.

23. The Intervenors raised the objections that the AGM held on 11.07.2022 was not in conformity with various provisions of the Companies Act including Section 101 of the Act. The Intervenors contended that the notice of the meeting was not served to them despite the undisputed fact that they are the shareholders of the Company. Herein, it is important to see the report of RTA of the Company, annexed as Annexure R/1 with the memorandum of Reply to the Application.

The RTA in its report dated 23.08.2023 stated the following:

“This letter is in reference to your E-mail dated August 21, 2023 received by us. Please see the below points for your easy perusal:

- 1. As on record date (i.e. June 10, 2022) for the purpose of dispatch of notice of Annual General Meeting (hereinafter*

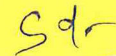
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called as the "the AGM") for the F.Y. 2021-22. First Choice Stock Brokers Pvt. Ltd. and Prem Somani Share Brokers Pvt. Ltd. were not the shareholders of the company.

2. In pursuant to the MCA General Circulars No. 14/2020 dated 8th April, 2020, Circular No. 17/2020 dated 13th April, 2020 and other circulars issued by various regulatory authorities from time to time, the notice of AGM were sent to all shareholders of the company whose E-mail ID were registered in the records of the depository/ RTA on record date 10th June, 2022. Further, the notice of the AGM was published on the website of the company and the same was duly published in the vernacular newspaper by way of newspaper advertisement.
3. Further in reference to the Circulars as mentioned in point no. 2 as above, the E-mail ID of 2 shareholders name Sarita Somani and Navneet Somani who were holding 22500 shares under the Folio No. 25 and 25000 shares under the Folio No. 4 respectively of the company, was not registered in the record of the company. Therefore, notice of the AGM was not sent to these 2 shareholders due to non-availability of their E-mail IDS in our records. Further, the same has been updated by us for Sarita Somani on July 13, 2022 and for Navneet Somani on July 01, 2022 upon receipt of requisite documents from the shareholders.
4. Further also note that in reference to the circulars as mentioned in the point no. 2 as above, the E-mail ID of another shareholder named Somani Securities Limited was not registered in our record on the record date. Therefore, notice of the AGM was not sent to Somani Securities Limited."

24. As per circular issued by the MCA, the Companies have been allowed to convene the AGM with VC or OAVM. The SEBI in its circular has relaxed the requirement of sending the hard copy of annual return and financial statement u/s 136 of the Act in respect of the Shareholders who have not registered their



e-mail addresses. Further, we observe that the company has published the advertisement in the *Financial Express* (English Newspaper) and *Dainik Navajyoti* (Hindi Language Newspaper), having electronic edition 01.06.2022 specifying the date and time of the AGM, availability of the notice on companies website and website of stock exchange, manner of registration of email IDs by the members, who are yet to register their email ID with the company, manner of voting through remote e-voting and through e-voting at the AGM etc. Thus, we find no violation of provisions of Companies Act including Section 101 of the Act. Moreover, in this regard, we have also considered the Scrutinizer Report submitted to the AGM held on 11.07.2022. The Intervenors had not raised any objection pursuant to the same, thus, no irregularities have been noticed. The Scrutinizer Report is annexed as Annexure A5 with the Application. Therefore, we find no irregularity in either in the holding of the AGM or servicing of notice of AGM to the shareholders.

25. Notices were issued in accordance with provisions of Section 66(2) of the Act, to the Central Government, Registrar of Companies, SEBI and to the Creditors of the Company for their representation in relation to the proposed Scheme of Reduction of Equity Share Capital *vide* its Order dated 23.09.2022. Other than the observations/representations mentioned above, no observations have been received. The Petitioner has already submitted the NOC obtained from the BSE



Ltd and SEBI. We have, in detail, considered the representations so made pursuant to the Scheme of Reduction of Equity Share Capital. The Petitioner has submitted an Affidavit pursuant to the observations received.

26. The Petitioner in accordance Section 66(3) of the Act read with Rule 2 of the National Company Law Tribunal (Procedure for Reduction of Share Capital) Rules, 2016 has submitted the following documents:

26.1. List of creditors duly certified by the Managing Director (attached as Annexure 6 with the Petition);

26.2. A certificate by the Auditor that the company is not, as on the date of filing of the Petition, in arrears in the repayment of the deposits or the interest thereon (attached as Annexure 7 with the Petition);

26.3. A certificate by the Company's Auditor to the effect that the Accounting Treatment proposed by the Company for the reduction of share capital is in conformity with the accounting standards specified in section 133 or any other provisions of Act (attached as Annexure 8 with the Petition);

26.4. A certificate by the Statutory Auditor dated 04.01.2023 certifying that "...the Company does not have any credit balance to any creditor as on 04.01.2023". Further, the Statutory Auditor mentioned that "... we certify that there is no salary payable in the Company". In addition, NOC of the

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Creditors has been placed on record by way of Affidavit filed vide Dairy No. 132/2023 dated 17.01.2023.

27. The company is permitted to register the minutes of AGM held on 11.07.2022 as per Section 66(5) of the Act.
28. The Company is directed to publish a notice informing the approval of the Reduction of Equity Share Capital in two newspapers, i.e. One in English Language Newspaper and One in Vernacular Language Newspaper having wide circulation in the State of Rajasthan within 30 days of the Registration.
29. The Petitioner Company is directed to deliver a certified copy of this judgment along with aforesaid minutes to the Registrar of Companies, Rajasthan and all the Statutory Authorities concerned with the Company, within 30 days of the receipt of the judgment.
30. The *Company Petition (IB) No. 27/66/JPR/2022* is allowed and the Scheme for Reduction of Share Capital is approved. The Intervention Application *Ivn. P. (CA) No. 02/JPR/2022* is dismissed and *Company Application No. 04/JPR/2023* is allowed.

**DEEP CHANDRA JOSHI,
JUDICIAL MEMBER**

**RAJEEV MEHROTRA,
TECHNICAL MEMBER**