nexdigm

Case Study

A leading pharmaceutical component manufacturer for respiratory drug delivery

Service(s) offered: **Capital Reduction**

Sector/Industry: **Healthcare (Medical Devices)**

Cancellation of share capital against accumulated losses and return of excess capital

The Client

Headquartered in the United Kingdom, ABC Group is engaged in the manufacture of specialist pharmaceutical component for respiratory drug delivery.

Its Indian subsidiary (ABC Private Limited or the Company) was incorporated in 2009 to manufacture, market and distribute specialist pharmaceutical component for respiratory drug delivery.

Context

Initially, the Company was formed to engage in the manufacturing activity, and therefore, it was heavily capitalized. Due to compelling reasons, the Group took strategic decision to cease manufacturing activity and continue the service activity by supporting Group mostly on a cost-plus model. However, the manufacturing operation by then incurred huge losses and the Company was heavily capitalized. But due to accumulated losses, the Company's capital was not represented by the available assets. Furthermore, heavy capital also triggered certain compliances for the Company as per Indian company law.

Nexdigm evaluated the Company's financial position and conceptualized the cancellation of share capital against accumulated book losses that enabled the Company to present its financial position realistically whilst allowing the shareholders to receive their invested money, which the Company no longer needed.

Case Highlights

- Tax and regulatory advisory on cancellation of share capital against accumulated losses and repatriation of excess capital to shareholders
- Advice that write-off of book losses against share capital does not affect tax losses and they will continue to be carried forward
- Cancellation of share capital inter alia enabled Company to mitigate non-compliance of not appointing a Company Secretary
- It helped the Company to present its financial position realistically whilst allowing the shareholders to receive their invested money, which the company no longer needed
- Appropriate reporting under exchange control regulations generating an effect of reduced share capital

Our Approach

The Nexdigm approach to this project was based on project management's four pillars: Time, Cost, Quality, and Risk. The assignment's primary requirement was to assess the existing situation and build a roadmap for business reorganization. A dedicated project team was assigned, which led the project, which involved complex regulatory involvement coupled with the practical challenge of a raging pandemic.

Owing to the sensitive timeline for the proposed liquidation, the project continued to be operational during the restricted environment. The team ensured adherence to the timelines by closely coordinating with the Group management, Indian management, and other stakeholders while working remotely.

Project Management Support

Nexdigm provided support across several phases of the project, from conceptualization to reduction of capital. The team managed the project in the following areas:

Conceptualization of Option: Nexdigm closely evaluated the present business activities, financial position and capital needs of the Company. Thereafter, suggested capital reduction by canceling share capital against the accumulated book losses and returning excess capital to the shareholders which is no longer required. Nexdigm engaged with the Company and management to understand their business model and capital requirement.

Tax Advice: Nexdigm advised the Company on the tax impact of the return of excess share capital to the shareholders that is no longer required having regard to the tax statutes, including the tax treaty. Also, advised on the preservation of tax losses despite write-off of book losses. We also advised on the compliances to be undertaken by the Indian Company as well as the non-resident shareholders.

Regulatory Advice: Nexdigm evaluated regulatory perspectives such as compliances that are triggered due to heavy capital and the impact on those once the capital is canceled. Regulatory advice also involved appropriate reporting under Indian exchange control regulations to generate an effect of reduced capital on reporting portal.

Initiation of Capital Reduction Process: Capital reduction process broadly involved determining the quantum of capital to be reduced against the accumulated losses and return of excess capital, drafting of the Scheme of capital reduction, approval of shareholders, application to the Tribunal, procuring dispensation of creditors consent, procuring reports from regulatory authorities such as the Registrar of Companies and Regional Director, Ministry of Corporate Affairs, obtaining final approval to the merger from the Tribunal, filing of order with the Registrar and giving effect in the registry.

Capital reduction also involved representation before aforesaid regulatory authorities and submission of filtered information in an appropriate manner.

Nexdigm extensively worked with the Company's existing consultant to ensure that they were also aligned to project sensitivity and timelines.

Critical Issues: During the entire process, various critical issues arose, which were dealt with after a thorough evaluation of applicable laws. Briefly, the issues involved whether the write-off of accumulated book losses would also wipe out tax losses. This was answered positively to the effect that tax losses will remain available even after the cancelation of accumulated book losses.

Impact

Undeterred by pandemic restrictions/lock-down, the Nexdigm project team ensured that the capital reduction is consummated by March 2022 by resolving every critical issue appropriately and in accordance with the law, delivering to the management's expectations.

The project helped the Group to achieve: (i) resize its balance sheet to present more realistic position by writing off the losses against capital; (ii) come out of paid-up capital threshold so now mandatory appointment of Company Secretary is not required; and (iii) step out of paid-up capital threshold where certificate from practicing Company Secretary is not required amongst other benefits. Thus, the one solution has resolved the Company's multiple issues.

For more information on this case study, please write to us at:

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You can also visit our website to know how our services resulted in tangible business benefits:

www.nexdigm.com