

IN THE NATIONAL COMPANY LAW TRIBUNAL, BENGALURU BENCH

[Through Physical hearing/ VC Mode (Hybrid)]

ITEM No.19
C.P. No.52/BB/2024

IN THE MATTER OF:

M/s. Firepro System Pvt. Ltd.

... Petitioner

Petition under Section 66 of Companies Act, 2013

Order delivered on: 17.10.2025

CORAM:

SHRI SUNIL KUMAR AGGARWAL
HON'BLE MEMBER (JUDICIAL)

SHRI RADHAKRISHNA SREEPADA
HON'BLE MEMBER (TECHNICAL)

PRESENT:

For the Petitioner : Appeared

For the ROC : Shri Vinayaka S. Pandit

ORDER

1. Vide separate Order, **the Petition has been partly allowed.** File be consigned to Record room.

-Sd-
RADHAKRISHNA SREEPADA
MEMBER (TECHNICAL)

-Sd-
SUNIL KUMAR AGGARWAL
MEMBER (JUDICIAL)

Shruthi

IN THE NATIONAL COMPANY LAW TRIBUNAL, BENGALURU
(HYBRID MODE)

C.P. No.52/BB/2024

Under Section 66 and 52 of the Companies Act, 2013 and
the National Company Law Tribunal (Procedure for Reduction
of Share Capital of Company) Rules, 2016

IN THE MATTER OF:

Firepro Systems Private Limited

Registered Office at -No. 10 & 11 HAL
2nd stage, Bengaluru- 560008

... **Petitioner**

Last date of hearing : 01.09.2025

Order delivered on : 17.10.2025

Coram:

- 1. Hon'ble Shri Sunil Kumar Aggarwal, Member (Judicial)**
- 2. Hon'ble Shri Radhakrishna Sreepada, Member (Technical)**

Parties/Counsels Present:

For the Petitioner	:	Shri Bibas Kittur
For the ROC	:	Shri Vinayaka

O R D E R

Per Radhakrishna Sreepada, Member(Technical):

1. This Company Petition is filed on 26.02.2024 by the Petitioner under Section 66 of the Companies Act, 2013 (hereinafter referred to as the "Act") read with the National Company Law Tribunal (Procedure for Reduction of Share Capital of Company) Rules, 2016 and the applicable provisions of the National Company Law Tribunal Rules, 2016, seeking the following reliefs:

(A) INTERIM PRAYERS:

I. This Hon'ble Tribunal may be pleased to direct that notice to be issued to:

*(i) Central Government i.e. Regional Director, South East Region,
Hyderabad;*

(ii) Registrar of Companies, Karnataka; in Form No. RSC - 2 pursuant to Section 66(2) of the Companies Act 2013 read with Rule 3(i) of National Company Law Tribunal (Procedure for reduction of share capital of Company) Rules, 2016 for seeking their representations and objections, if any.

II. This Hon'ble Tribunal may kindly issue direction for issuing notice to the secured and unsecured creditors and publication of notice in newspapers through Indian Express (English daily) and Kannada Prabha (Kannada Daily) under Rule 3 (iii) and Rule 3 (3) of the National Company Law Tribunal (Procedure for Reduction of Share Capital of Company) Rules, 2016 pursuant to the provisions of Rule 3(6) of the above mentioned NCLT Rules, 2016.

(B) FINAL PRAYERS:

I. That the reduction of capital resolved pursuant to the special Resolution thereby reducing the Paid up Share Capital of the Company from Rs. 543,61,16,180/- (Rupees Five hundred and forty three crores sixty one lacs sixteen thousand one hundred and eighty only) divided into 54,36,11,618 Equity Shares of Rs.10]/-(Rupees Ten only) each to Rs. 54,36,11,620/- (Rupees Fifty Four Crores Thirty Six Lacs Eleven Thousand Six Hundred and Twenty only) divided into 5,43,61,162 Equity Shares of Rs.10/- (Rupees Ten only) each fully paid up, along with a reduction to the Securities Premium Account of the Company from Rs. 460,99,43,321/- (Rupees Four Hundred Sixty Crores Ninety nine Lakhs Forty Three Thousand Three Hundred Twenty One only) to Rs NIL, and such cumulative reduction would be affected by writing off the Accumulated Losses of Rs. 950,24,47,881/- (Rupees Nine Hundred Fifty Crores Twenty Three Lakhs Thirty Seven Thousand Eight Hundred Eighty One only) be confirmed.

II. That the reduction of Share capital Account from Rs. 543,61,16,180/-(Rupees Five Hundred And Forty Three Crores Sixty One Lacs Sixteen Thousand One Hundred And Eighty Only) divided into 54,36,11,618 Equity Shares of Rs.10/- (Rupees Ten only) each to Rs. 54,36,11,620/- (Rupees Fifty Four Crores Thirty Six Lacs Eleven Thousand Six Hundred and Twenty only) divided into 5,43,61,162 Equity Shares of Rs.10/- (Rupees Ten only) each be confirmed;

III. That to this end all inquiries and directions necessary and proper be made and given;

IV. That the form of minutes under Sections 66 and 52 of the Act as set out in paragraph No.16 above be approved; and

V. That such further or other orders be made as the Tribunal shall deem fit in the interests of justice and equity.

2. Brief facts in the Petition are as follows:

- (a) The petitioner company was incorporated on 27.12.2001, under the provisions of the Companies Act, 1956 as a 'Private Limited Company, limited by shares with a share capital vide CIN: U28999KA2001PTC029937, in the State of Karnataka.
- (b) It is stated that Article 15 of the Articles of Association empowers the Petitioner Company to reduce its share capital or other capital accounts in accordance with the provisions of the Act. The extracts of the said Article are produced as part of **Annexure A Colly**.
- (c) The present authorized, issued and paid-up Share Capital of the Petitioner Company as on 30.06.2023, is as follows:

Authorized Capital	Amount (INR)
55,00,00,000 Equity Shares of Rs.10/- each	550,00,00,000/-
Issued, Subscribed and paid-up Capital	
54,36,11,618 Equity shares of Rs.10/- each	543,61,16,180/-

- (d) There are no audit qualifications, reservations or adverse remarks or disclaimers made by the statutory auditor in their reports for the Financial Years ending on 31.03.2021, 31.03.2022, and 31.03.2023. The audited financial statements are annexed as **Annexure B Colly**. It is further stated that there are no pending inspections, inquiries, or investigations against the Company under the Companies Act, 2013 as on the date of filing the present Petition.
- (e) The Petitioner submits that the Board of Directors, in their meeting held on 28.12.2023, decided to reduce the paid-up share capital of the Company. The rationale behind such

reduction is to present a true and fair view of the Company's financial position, to wipe off the accumulated losses, and to enable the Company to explore new business opportunities and sources of revenue.

- (f) Pursuant to the notice dated 09.02.2024, an Extraordinary General Meeting of the shareholders of the Petitioner Company was held on 09.02.2024. At the said meeting, 100% of the equity shareholders voted in favour of the resolution for reduction of share capital.
- (g) The shareholders of the Company passed a special resolution approving the reduction of the paid-up share capital of the Company from Rs.543,61,16,180/- divided into 54,36,11,618 Equity Shares of Rs.10/- each to Rs.54,36,11,620/- divided into 5,43,61,162 Equity Shares of Rs.10/- each, and also reducing the Securities Premium Account from Rs.460,99,43,321/- to Rs.NIL/-. The total cumulative reduction of Rs.950,24,47,881/- shall be utilized for writing off the accumulated losses in the books of the Company.
- (h) Accordingly, the accounting impact of the reduction, as approved, results in a decrease in paid-up share capital by Rs.489,25,04,560/-. After such reduction, the paid-up capital of the Company shall stand at Rs.54,36,11,620/- divided into 5,43,61,162 Equity Shares of Rs.10/- each, fully paid-up. This treatment is in conformity with the applicable Accounting Standards.
- (i) It is submitted that the reduction of capital does not involve diminution of any liability in respect of unpaid share capital. There will be no reduction in the nominal value of an equity share of Rs. 10/-. The creditors of the Applicant Company will in no way be affected by the proposed reduction of share capital as

there is no reduction in the amount payable to any of the creditors, no compromise or arrangement is contemplated with the creditors and there is no reduction in the security, which the creditors may have in the Applicant Company. Further, the proposed reduction of share capital would not in any way adversely affect the ordinary operations of the Applicant Company or the ability of the Applicant Company to honour its commitments or to pay its dues in the ordinary course of business.

- (j) The Equity Shareholders of the Applicant Company at the Extraordinary General Meeting held on 09.02.2024 at the Registered Office of the Company have passed the following Special Resolution:

"RESOLVED THAT pursuant to the provisions of Sections 52 and 66 of the Companies Act, 2013 and other applicable provisions of the Companies Act, 2013, (including any statutory medication(s) or re-enactment thereof for the time being in force) and the rules made thereunder (the "Act") and the National Company Law Tribunal (Procedure for Reduction of Share Capital) Rules, 2016 (including any statutory modification, amendment or re-enactment thereof for the time being in force), read with Article 15 of the Articles of Association of the Company such other approvals, consents, permissions and sanctions as may be necessary, to be obtained from approvals as may be required from the appropriate authorities, the consent of the creditors as may be required and subject to the confirmation of the Hon'ble National Company Law Tribunal, Bengaluru Bench, the consent of the Members be and is hereby accorded to the proposed reduction of the Paid up Share Capital of the Company from Rs. 543,61,16,180 /- (Rupees Five hundred and forty three crores sixty one lacs sixteen thousand one hundred and eighty only) divided into 54,36,11,618 Equity Shares of Rs.10]/- (Rupees Ten only) each to Rs. 54,36,11,620 /- (Rupees Fifty Four Crores Thirty Six Lacs Eleven Thousand Six Hundred and Twenty only) divided into 5,43,61,162 Equity Shares of Rs.10/- (Rupees Ten only) each fully paid up, along with a reduction to the Securities Premium Account of the Company from Rs. 460,99,43,321 to Rs0, and such cumulative reduction would be affected by writing off the Accumulated Losses of Rs.950,23,37,881 ("Capital Reduction"). **Resolved Further That** effective from the date of the confirmation of the Scheme by NCLT, Bengaluru Bench and all other approvals from any other appropriate authorities as may be required, the consent be and is hereby accorded to the reduction of the paid-up share capital as it stands on the date of such confirmation

by Rs. 489,25,04,560 in aggregate and accordingly the paid-up capital of the Company after such reduction shall be Rs. 54,36,11,620 divided into 5,43,61,162 equity shares of Rs.10 each fully paid-up and that this accounting treatment is in conformity with the Accounting Standards applicable to the Company.

RESOLVED FURTHER THAT any Director of the Company and, Mr. Kidambi Ramanujachari, Chief Financial Officer, be and are hereby severally authorized to do all such acts, matters, deeds and things as may be necessary or desirable including any directions for settling any question or doubt or difficulty whatsoever that may arise, for the purpose of giving effect to the proposed reduction of the Capital Reduction of the Company as placed before the Board or to any modification thereof, in particular:

a) Finalising, amending and settling the draft, application/petition and assent to such modification, alterations and conditions, if any, to effect such medication or amendment as may be necessary or desirable to give effect to the proposed Capital Reduction,

b) file application with the Hon'ble National Company Law Tribunal, Bengaluru Bench for directions and confirmation of the proposed reduction of Equity Share Capital, signing, affirming and verifying affidavit, applications, petitions, vakalatnama etc. in the Hon'ble National Company Law Tribunal, Bengaluru, Bench;

c) signing all applications, petitions, affidavits, undertakings, letters, documents relating to the proposed Capital Reduction;

d) to verify, sign, deal, swear, affirm, declare, deliver, execute, make or enter into, deed, declaration, instruments, vakalatnamas, objections, notices, advertisements, announcements, affidavits, and writings whatsoever as may be necessary under applicable law;

e) make representation on their own or through legal counsels before Hon'ble National Company Law Tribunal, Bengaluru Bench or other authorities for confirmation of the proposed reduction of Equity Share Capital;

f) To engage any counsel, consultants, valuers, auditors, advocates, accountants, registered valuers, or any other agency as may be required in connection with the proposed Capital Reduction;

g) To file requisite forms with the Registrar of Companies and any other statutory authority in connection with the proposed Capital Reduction; and

h) do all such acts and things necessary and convenient in relation thereto and to give effect to this Resolution as the Board of Directors in its absolute discretion consider necessary, expedient, and proper.

RESOLVED FURTHER THAT the Board be and is hereby authorized, in its absolute discretion, to make the reduction of the Share Capital and Securities Premium Account on such other terms and conditions as they may consider appropriate and to accept such other conditions and modifications as may be prescribed by the Hon'ble National Company Law Tribunal, Bengaluru Bench, with other appropriate bodies/authorities while according their confirmation to the proposed."

3. It is submitted that the reduction does not affect any liability in respect of unpaid share capital, nor is it prejudicial to the interest of creditors. The Company has not accepted any public deposits and there are no arrears of any deposit or interest thereon. A declaration to this effect is included in the Petition.
4. The Company submits that the proposed reduction does not in any way adversely impact the employees of the Company. The Statutory Auditors, Varun K & Associates Chartered Accountants , have issued a certificate confirming that the accounting treatment for the proposed capital reduction is in compliance with the applicable Accounting Standards under Section 133 of the Companies Act, 2013.
5. When the C.P. was listed on 20.05.2024, following order was passed:

"Issue Notice to the ROC, Karnataka, Regional Director (SER), Hyderabad, and to the Creditors of the Petitioner Company. Registry is directed to prepare the notice and Ld. Counsel for the Petitioner is permitted to collect the notice and serve it on the aforesaid statutory Authorities and Creditors of the Petitioner Company along with a copy of the petition and other material documents through email as well as by speed post and to file an Affidavit of Service along with tracking reports in the Registry within two weeks. 3. Upon receipt of notice, Respondents are directed to file its report/reply within three months, and thereafter the Petitioner is granted one week to file its response thereto, after duly serving the copy on other side. Petitioner is also permitted to cause paper publication in 'Indian Express' English daily and translation thereof in 'Kannada Prabha' Kannada daily in Bangalore Editions and file proof of publication well before the next date of hearing."

6. In compliance to the said Order, the Petitioner Company has filed compliance Affidavit vide Diary No.4543 dated 31.07.2024, wherein the Petitioner Company has also attached the postal receipts of notices sent

to the Regional Director, Hyderabad, Registrar of Companies, Karnataka and Creditors and communication to the ROC and Creditors.

7. The Registrar of Companies, Karnataka, and the Regional Director, Hyderabad have filed a Common Report vide Diary No.5790 dated 10.10.2024, by *inter alia* observing as under:

1) In para 6 of the report, it was submitted that the Company has open charges as per MCA records and must furnish No Objection Certificates from the concerned charge holders before the Petition can be allowed.

2) In para 7 of the report, it was stated that the Petition seeks reduction of paid-up share capital from ₹5,43,61,16,180/- to ₹54,36,11,620/- and reduction of Securities Premium Account from ₹4,60,99,43,321/- to Nil, by writing off accumulated losses of ₹9,50,23,37,881/-.

3) In para 8 of the report, it was submitted that there is a discrepancy of ₹1,10,000/- in the cumulative reduction figure. However, the Petitioner has filed an IA dated 10.09.2024 clarifying the typographical error, which may be noted by the Hon'ble Tribunal.

4) In para 9 of the report, it was stated that as per Para 18 of the Petition, the form of minute to be registered under Section 66(5) provides that the paid-up share capital will be ₹54,36,11,620/- divided into 5,43,61,162 equity shares of ₹10/- each, and Reserve and Surplus will be Nil.

5) In para 10 of the report, it was submitted that Article 15 of the Articles of Association empowers the Company to reduce its capital in accordance with the provisions of the Companies Act, 2013.

- 6) In para 11 of the report, it was stated that the Board of Directors approved the capital reduction in their meeting held on 28.12.2023.
- 7) In para 12 of the report, it was mentioned that the Special Resolution for capital reduction was passed in the EGM held on 09.02.2024, filed in e-Form MGT-14 vide SRN AA6840546 dated 13.02.2024.
- 8) In para 13 of the report, it was stated that the Company submitted a Certificate dated 16.02.2024 from its Managing Director, certifying the list of creditors as on 12.02.2024, in compliance with Rule 2(5)(b) of the NCLT Rules, 2016.
- 9) In para 14 of the report, it was stated that the Company also submitted a Certificate from its Auditor, Varun K & Associates, dated 16.02.2024 confirming the list of creditors as on 12.02.2024.
- 10) In para 15 of the report, it was submitted that the Company owes ₹7,61,87,721/- to Secured Creditors and ₹94,88,92,428.61/- to Unsecured Creditors, and No Objection Certificates from creditors have not been furnished. The Company may be directed to obtain and submit the same before approval of the Petition.
- 11) In para 16 of the report, it was stated that a declaration dated 13.02.2024 confirms that the Company has not accepted any deposits as on 12.02.2024, supported by a certificate from its Auditor.
- 12) In para 17 of the report, it was submitted that the accounting treatment proposed for the reduction must conform

with the Accounting Standards notified under Section 133 of the Companies Act, 2013.

13) In para 18 of the report, it was stated that the copy of advertisement required under the NCLT Rules was not attached, and it is unclear whether advertisement was made. The Hon'ble Tribunal may seek clarification from the Petitioner in this regard.

14) In para 19 of the report, it was submitted that as per the Audited Financials for FY 2022-23, the Company is a loss-incurring entity.

15) In para 20 of the report, it was stated that as per Note 17, the Company has undisputed statutory dues of ₹3.46 crores. The Petitioner may be directed to furnish an undertaking to settle these dues immediately if not already done.

16) In para 21 of the report, it was submitted that the Auditor's Report discloses disputed dues relating to Sales Tax, Service Tax, and Provident Fund amounting to ₹6.56 crores. The Company may be directed to furnish an undertaking to settle dues upon crystallisation.

17) In para 22 of the report, it was stated that as per Note 15, the Company has dues of ₹3.18 crores to MSMEs. The Company may be asked to explain compliance with the MSMED Act, 2006 and submit an undertaking to settle dues in accordance with the Act.

18) In para 23 of the report, it was submitted that the Company is loss-making and has substantial dues. It may be directed to furnish details of available cash/bank/investment balances and a timeline for settlement of dues to creditors, along with an undertaking.

19) In para 24 of the report, it was stated that the accumulated losses are proposed to be adjusted against capital and securities premium (₹489.25 crore + ₹460.99 crore = ₹950.24 crore). However, the petition and resolutions are silent on whether the reduction is proportionate or selective, despite the fact that the shareholder list and financials reflect two classes of shareholders. The Hon'ble Tribunal may direct the Petitioner to clarify this.

20) In para 25 of the report, it was mentioned that there are no open complaints, prosecutions, technical scrutiny, inquiry, inspection or investigations pending against the Petitioner Company as per MCA records.

8. The Petitioner Company in response to the Common Report of RD and ROC has filed a reply affidavit vide Diary No.5868 dated 17.10.2024 has inter alia stated as under:

1) In reply to para 6 & 15 of the ROC & RD Report:

The Petitioner Company served notices in Form RSC-3 to all its secured and unsecured creditors on 12.07.2024 via Registered Post Acknowledgement Due. The Affidavit of Compliance was filed on 31.07.2024 vide Diary No. 4543. It is respectfully submitted that no objections or responses were received from any creditors. As per Section 66 of the Companies Act, 2013 and the NCLT (Procedure for Reduction of Share Capital of Company) Rules, 2016, obtaining NOCs from creditors is not required where the reduction does not compromise or affect creditor interests. In the present case, the proposed reduction is purely in respect of the share capital and securities premium account and does not involve any payment or compromise with creditors. Hence, their rights remain unaffected.

- 2) In reply to para 7 of the ROC & RD Report:
The Petitioner Company confirms the correctness of the proposed reduction of share capital and securities premium account as stated in the Common Report.
- 3) In reply to para 8 of the ROC & RD Report:
The Petitioner Company acknowledges the typographical error in the figure of accumulated losses and has submitted an Interlocutory Application dated 10.09.2024 to rectify the figure from ₹950,23,37,881/- to ₹950,24,47,881/-. The Petitioner prays that the Hon'ble Tribunal may take the same on record and proceed accordingly.
- 4) In reply to para 9 of the ROC & RD Report:
The Petitioner Company confirms the accuracy of the proposed form of minute prepared in accordance with Section 66(5) of the Companies Act, 2013, reflecting the reduced paid-up share capital and NIL balance in the securities premium and reserves account.
- 5) In reply to para 10 of the ROC & RD Report:
The Petitioner Company submits that Article 15 of its Articles of Association permits reduction of share capital in accordance with applicable provisions of the Companies Act, 2013.
- 6) In reply to para 11 of the ROC & RD Report:
The Petitioner Company affirms that the Board of Directors approved the proposed reduction of share capital at its meeting held on 28.12.2023.
- 7) In reply to para 12 of the ROC & RD Report:
The Petitioner Company confirms that the shareholders of the Company passed a special resolution approving the reduction of share capital at the Extraordinary General Meeting held on

09.02.2024, and the said resolution was duly filed in e-Form MGT-14 bearing SRN: AA6840546 dated 13.02.2024.

8) In reply to para 13 of the ROC & RD Report:

The Petitioner Company confirms that the Managing Director issued a certificate dated 16.02.2024 certifying the correctness of the list of creditors as on 12.02.2024.

9) In reply to para 14 of the ROC & RD Report:

The Petitioner Company further confirms that the Statutory Auditor issued a certificate dated 16.02.2024, verifying the list of creditors as on 12.02.2024.

10) In reply to para 15 of the ROC & RD Report:

The Petitioner reiterates that, in line with the applicable rules and provisions, NOCs from creditors are not mandatory in a case where the reduction does not prejudice their interests. Notices were duly served to all creditors and no objections were received.

11) In reply to para 16 of the ROC & RD Report:

The Petitioner Company confirms that it has filed a declaration dated 13.02.2024 and an Auditor's certificate dated 16.02.2024, confirming that the Company had not accepted any public deposits, nor were there any arrears in deposits, as on 12.02.2024.

12) In reply to para 17 of the ROC & RD Report:

The Petitioner Company submits that the certificate dated 10.01.2024 issued by Varun K & Associates, Chartered Accountants, confirming the conformity of accounting treatment with Section 133 of the Companies Act, 2013, was filed as Annexure H of the Petition (RSC-1).

13) In reply to para 18 of the ROC & RD Report:

The Petitioner Company had published the advertisement regarding the Reduction of Capital in "New Indian Express" (English Daily) and "Kannada Prabha" (Kannada Daily) in Form RSC-4 on 11.07.2024. Original copy of the said publication was filed as Annexure 3 of the Compliance Affidavit in Form RSC-5 dated 30.07.2024.

14) In reply to para 19 of the ROC & RD Report:

The Petitioner Company confirms that the statement made in the report regarding the Company being loss-incurring is true to the best of its knowledge.

15) In reply to para 20 of the ROC & RD Report:

The Petitioner Company confirms that it has settled statutory dues amounting to ₹297.55 lakhs. The remaining dues pertain to GST withheld from vendors due to non-filing of returns by the vendors.

16) In reply to para 21 of the ROC & RD Report:

The Petitioner Company confirms that the disputed statutory dues are pending before various appellate authorities and undertakes to settle them once crystallized.

17) In reply to para 22 of the ROC & RD Report:

The Petitioner Company confirms that it has complied with the MSMED Act, 2006, and has already settled ₹2.86 crores out of the total ₹3.18 crores of outstanding MSME dues. The remaining ₹0.32 crores have been withheld due to service deficiencies.

18) In reply to para 23 of the ROC & RD Report:

The Petitioner Company submits that the proposed reduction of capital involves no outflow to shareholders and is solely

intended to adjust accumulated losses. All creditors have been duly notified and no objections have been received.

19) In reply to para 24 of the ROC & RD Report:

The Petitioner Company submits that the Class A and Class B equity shares were merged into a single class pursuant to the resolutions passed by the Board and Shareholders on 20.07.2023, which were duly filed with the ROC. The proposed reduction shall be applied proportionately to all shareholders.

20) In reply to para 25 of the ROC & RD Report:

The Petitioner Company confirms that there are no open Complaints, Prosecution, Technical Scrutiny, Inquiry, Inspection, or Investigation pending against it, as also stated in the Common Report.

9. During the course of hearing, the Ld. Counsel for the ROC submitted that there are no further observations to the reply filed by the Petitioner Company to the report of the ROC report.

10. In the hearing held on 19.06.25, the Applicant was requested to file the break-up of year wise losses which are proposed to be written off. The details were filed by memo dated 01.09.25 and physically on 02.09.25.

11. Heard the Learned Counsel for the Petitioner and Learned Counsel for ROC & RD. We have carefully perused the pleadings of the parties and extant provisions of the Companies Act 2013 and Rules made thereunder. In this petition, the Company intends to write off the Accumulated losses by

- a. Reducing the issued, subscribed and paid-up share capital of the Company from Rs. 543,61,16,180/- divided into 54,36,11,618 Equity Shares of Rs.10/- each to Rs. 54,36,11,620/- consisting of

5,43,61,162 Equity Shares of Rs.10/- each. This falls under the provisions of **Section 66** of the Companies Act,2013.

b. Reducing the Securities Premium Account from Rs. 460,99,43,321/- to Rs.0. This falls under **Section 52** of the Companies Act,2013.

12. After examining the details filed and the relevant provisions of the Companies Act.2013, the following decisions are arrived at.

12.1 The Petitioner Company is availing the reduction of paid-up share capital which is in consonance with **Section 66** of the Companies Act, 2013. Accordingly, the proposed reduction of Equity Share Capital from Rs 543,61,16,180/- to 54,36,11,620/- to write off the Accumulated losses to the extent of Rs 489,25,04,560/- is **APPROVED**.

12.2 Coming to the Proposal to Reduce the Share Premium Account from Rs 460,99,43,321/- to Rs 0, It is contended that the Article 15 of the Articles of Association of the Company provide that the Company may, by Resolution as prescribed by the Act reduce in any manner and in accordance with the provisions of the Act and the Rules;

- i. Its Share Capital
- ii. Any Capital Redemption reserve account and/or
- iii. Any Securities Premium account and/or
- iv. Any other reserve in the nature of Share Capital.

Hence, in accordance with this, a resolution has been passed to reduce the Share premium and apply it to set off the Accumulated Losses.

12.2.1. These submissions are examined in the light of the Provisions of the Companies Act,2013. We are of the Considered Opinion that the Provisions of Section 52 of the Companies Act,2013 does not permit such an action. When this was pointed out, it was argued that the Share premium account is similar to Equity Capital and hence the proposal is in Order.

For the purpose of Clarity, the Section 52 is reproduced below.

1) Where a company issues shares at a premium, whether for cash or otherwise, a sum equal to the aggregate amount of the premium received on those shares shall be transferred to a "securities premium account" and the provisions of this Act relating to reduction of share capital of a company shall, except as provided in this section, apply as if the securities premium account were the paid-up share capital of the company.

(2) Notwithstanding anything contained in sub-section (1), the securities premium account may be applied by the company—

(a) towards the issue of unissued shares of the company to the members of the company as fully paid bonus shares;

(b) in writing off the preliminary expenses of the company;

(c) in writing off the expenses of, or the commission paid or discount allowed on, any issue of shares or debenture of the company;

(d) in providing for the premium payable on the redemption of any redeemable preference shares or of any debentures of the company; or

(e) for the purchase of its own shares or other securities under section 68.

(3) The securities premium account may, notwithstanding anything contained in sub-sections (1) and (2), be applied by such class of companies, as may be prescribed and whose financial statement comply with the Accounting Standards prescribed for such class of companies under section 133,—

(a) in paying up unissued equity shares of the company to be issued to members of the company as fully paid bonus shares; or

(b) in writing off the expenses of or the commission paid or discount allowed on any issue of equity shares of the company; or

(c) for the purchase of its own shares or other securities under section 68.

Section 66 of the Companies Act, 2013

(1) Subject to confirmation by the Tribunal on an application by the company, a company limited by shares or limited by guarantee and having a share capital may, by a special resolution, reduce the share capital in any manner and in, particular, may—

(a) extinguish or reduce the liability on any of its shares in respect of the share capital not paid-up; or

(b) either with or without extinguishing or reducing liability on any of its shares,—

(i) cancel any paid-up share capital which is lost or is unrepresented by available assets; or

(ii) pay off any paid-up share capital which is in excess of the wants of the company, alter its memorandum by reducing the amount of its share capital and of its shares accordingly:

Provided that no such reduction shall be made if the company is in arrears in the repayment of any deposit accepted by it, either before or after the commencement of this Act, or the interest payable thereon.

(2) The Tribunal shall give notice of every application made to it under sub-section (1) to the Central Government, Registrar and to the Securities and Exchange Board, in the case of listed companies, and the creditors of the company and shall take into consideration the representations, if any, made to it by that Government, Registrar, the Securities and Exchange Board and the creditors within a period of three months from the date of receipt of the notice:

Provided that where no representation has been received from the Central Government, Registrar, the Securities and Exchange Board or the creditors within the said period, it shall be presumed that they have no objection to the reduction.

From a combined reading of the above two Sections, the Intention of the Act is that the **Procedure for Utilisation of Share premium is same as is mentioned in Section 66** of the Act, which include;

- a. Existence of the provision in Articles of Association
- b. Passing of Resolution.
- c. Accounting treatment to be given.

However, the **Purposes for which it can be utilised** is mentioned in Subsection 2 of Section 52.

Hence, it is Clear that the Share premium account cannot be utilised for the purpose of writing off of the Accumulated losses. This is because Section 52(2) does not list Setting off of Accumulated losses is one of the means of Application of Securities Premium Account.

12.2.2 Where the Wordings used in the Section are clear and leave no ambiguity then the Statute has to be interpreted as per Strict interpretation Rule.

On the issue of Strict interpretation of Statutes, Supreme Court in **COMMISSIONER OF INCOME-TAX VERSUS NC BUDHARAJA AND CO. AND ANOTHER - 1993 (9) TMI 6 (SUPREME COURT)** has held that "liberal interpretation, however, cannot be carried to the extent of doing violence to the plain and simple language used in the enactment. It would not be reasonable or permissible for the court to re-write the section or substitute words employed by the legislature in the name of giving effect to the supposed underlying subject. After all, the underlying object of any provision has to be gathered on a reasonable interpretation of the law employed by the legislature."

12.2.3. On the issue of the Articles of Association of the Company providing for Reduction of Share premium account in any manner, it has to be held that the provisions of Section 6 make it clear that the Provisions of Companies Act Will have overriding effect notwithstanding any thing to the Contrary contained in Memorandum of Association or Articles of Association.

In this context, reference to Section 6 of the Companies Act is relevant and the same is reproduced below.

Save as otherwise expressly provided in this Act--

(a) the provisions of this Act shall have effect notwithstanding anything to the contrary contained in the memorandum or articles of a company, or in any

agreement executed by it, or in any resolution passed by the company in general meeting or by its Board of Directors, whether the same be registered, executed or passed, as the case may be, before or after the commencement of this Act; and

(b) any provision contained in the memorandum, articles, agreement or resolution shall, to the extent to which it is repugnant to the provisions of this Act, become or be void, as the case may be.

13. From the above it is seen that the Provisions of Section 52 provide clearly the purposes for which Share Premium Account can be used and there being no ambiguity the provision need to be interpreted strictly as per the Decision of Hon'ble Supreme Court. Presence of any enabling provision in the Articles of Association is of no consequence in view of the explicit Supremacy of the Provisions of the Act guaranteed by Section 6.
14. It is noticed, as per the discussion above, the necessary compliance of the requirements of Sub- section (1), (2) and (3) of Section 66 of the Act have been made/satisfied by the Petitioner. In the circumstances, it is hereby ordered that the reduction of share capital of the Petitioner Company under Section 66 of the Companies Act, 2013 is hereby Confirmed; by approving the Minutes of EGM dated 09.02.2024 wherein the members of the Petitioner Company resolved to reduce the issued, subscribed and paid-up share capital of the Company from Rs.543,61,16,180/-divided into 54,36,11,618 Equity Shares of Rs.10/- each to Rs. 54,36,11,620/- consisting of 5,43,61,162 Equity Shares of Rs.10/- each and such reduction would be affected by writing off the Accumulated Losses of Rs.489,25,04,560/-.
15. In terms of the above, copy of the minutes approved along with this 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.RSA-6 as per National Company Law Tribunal (Procedure for Reduction of share capital of the company) Rules, 2016 and issue to the Applicants/Petitioner Company. The Petitioner

Company shall publish this order of confirmation in "Indian Express", English daily, Bengaluru edition and "Kannada Prabha" Kannada daily, Bengaluru edition, expeditiously and not later than 30 days from the receipts of copy of the order, as required under Section 66(4) of the companies Act, 2013.

16. Consequent to the reduction in share capital, the amount which will be considered for payment shall be subject to the compliance of FEMA and RBI as are applicable. Further compliance also should be made to the provisions of I.T. Act with regard to such payment, if any.
17. Accordingly, the prayer made in the Petition is allowed and the **C.P. No.52/BB/2024 is disposed of to the extent of Reduction of Equity Capital.** File be consigned to the Records.

Form of Minutes

a. The paid up Equity Share Capital of the Company is henceforth Rs. 54,36,11,620 (Rupees Fifty Four Crores Thirty Six Lacs Eleven Thousand Six Hundred and Twenty only) divided into 5,43,61,162 (Five Crore Forty Three Lacs Sixty One Thousand One Hundred and Sixty Two) Equity Shares of Rs. 10/- (Rupees Ten only).

b. At the date of registration of the minutes the issued, subscribed and fully paid-up capital shall be deemed to be 54,36,11,620/- (Rupees Fifty Four Crores Thirty Six Lacs Eleven Thousand Six Hundred and Twenty only) divided into 5,43,61,162 (Rupees Five Crore Forty Three Lacs Sixty One Thousand One Hundred and Sixty Two) Equity Shares of Rs. 10/- (Rupees Ten only) and Reserve and surplus will be Rs. NIL/-.

-Sd-

**RADHAKRISHNA SREEPADA
MEMBER (TECHNICAL)**

-Sd-

**SUNIL KUMAR AGGARWAL
MEMBER (JUDICIAL)**