

**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**MUMBAI BENCH – V**  
**COMPANY PETITION NO. C.P. / 220 (MB) / 2023**

In the matter of the Companies Act,  
2013And

In the matter of Section 66 read with  
Section 52 and other applicable  
provisions of the Companies Act, 2013  
including any statutory modification or  
re-enactments thereof for the time being  
in force and the Rules and Regulations  
framed thereunder.

And

In the matter of Reduction of Equity  
Share Capital of Destination Industrial  
Parks Private Limited

**DESTINATION INDUSTRIAL  
PARKS PRIVATE LIMITED**, a private  
limited company incorporated under the  
Companies Act, 1956 having its  
registered office at One World Center,  
11<sup>th</sup> Floor, Tower 2A, Senapati Bapat  
Marg, Mumbai – 400 013, Maharashtra.

**CIN: U70200MH2007PTC166936**

**...Petitioner Company**

**Order Dated: 08.05.2024**

**Coram:**

**MADHU SINHA**

**Member (T)**

**REETA KOHLI**

**Member (J)**

**Appearances:**

**For the Petitioner Company:** CA Harsh C. Ruparelia, i/b A R C H and Associates, Chartered Accountants

**For the Regional Director (WR):** Shri Altap Sheikh, Assistant Director

**For the Income-Tax Department:** Adv. Prachi Wazalwar a/w Adv. Arusha Bapat

**ORDER**

1. Heard the Professional for the Petitioner Company and the representative from the Regional Director (Western Region) and the Income-tax Department. No objector has come before the Tribunal to oppose the Petition nor any party has controverted any averments made in the Petition.
2. The Professional for the Petitioner Company submits that this Company Petition is filed for confirmation of the Special Resolution passed with requisite majority at the Extra-Ordinary General Meeting of the Members held on 21<sup>st</sup> day of August 2023, being Exhibit F-1 to the Company Petition, approving the reduction of the issued, subscribed and paid up equity share capital of the Petitioner Company, by way of cancelling and extinguishing 6,373 (Six Thousand Three Hundred Seventy Three) equity shares of Rs. 10 (Ten Rupees) each held by M/s. ILP Core Ventures III Pte. Ltd., the parent company, by payment of consideration of Rs. 7,569 (Indian Rupees Seven Thousand Five Hundred Sixty Nine Rupees) per

equity share, leading to a reduction in the issued, subscribed and paid-up equity share capital of the Petitioner Company from Rs. 2,74,510 (Two Lakhs Seventy-Four Thousand Five Hundred and Ten Rupees) divided into 27,451 (Twenty Seven Thousand Four Hundred and Fifty One) equity shares of Rs. 10 (Ten Rupees) each to Rs. 2,10,780 (Indian Rupees Two Lakhs Ten Thousand Seven Hundred Eighty) divided into 21,078 (Twenty One Thousand Seventy Eight) equity shares of Rs. 10 (Ten Rupees) each. The Petitioner Company shall pass appropriate entries as per the applicable accounting policies and accounting standards (specified in section 133 or any other provision of the Companies Act, 2013). Further, the difference of Rs. 4,81,73,507 (Four Crores Eighty One Lakhs Seventy Three Thousand Five Hundred Seven Rupees) between the face value of equity shares cancelled of Rs. 63,730 (Sixty Three Thousand Seven Hundred Thirty Rupees) and consideration of Rs. 4,82,37,237 (Four Crores Eighty Two Lakhs Thirty Seven Thousand Two Hundred Thirty Seven Rupees) shall be adjusted against the Securities Premium Account. The said special resolution was unanimously approved by the Equity Shareholders in their meeting held on 21st August 2023.

3. The Professional for the Petitioner Company stated that it is authorized by Article 9 of the Articles of Association to undertake reduction of share capital of the Petitioner Company. The extract of Article 9 of the Articles of Association, is as follows:

*“9. Subject to applicable laws the Company may, reduce in any manner and with, and subject to, any incident authorized and consent required by law,—*

*(a) its share capital;*

*(b) any capital redemption reserve account; or*

*(c) any share premium account.”*

4. The Petitioner Company submits that the rationale for the proposed reduction of share capital is to have an optimum capital structure for its business. Such rationalization of capital structure would help in maximizing overall shareholder value. Further, the Petitioner Company believes that the proposed reduction of Equity Share Capital is likely to have a positive impact on the key financial ratios such as return on capital employed, return on net worth, etc.
5. The Petitioner Company submits that the directions given by the Hon'ble Tribunal in the hearing held on 5<sup>th</sup> September 2023 and vide order dated 20<sup>th</sup> November, 2023, have been complied with.
6. The Petitioner Company submits that it has not availed any deposits and therefore, there has been no default in repayment of any deposits or interest thereon. A declaration by a director of the Petitioner Company along with a certificate from the statutory auditors of the Petitioner Company certifying the same is annexed to the Company Petition and marked as Exhibit C and Exhibit J-4, respectively.
7. The Petitioner Company submits that the proposed reduction shall not cause prejudice to the creditors of the Petitioner Company. The creditors of the Petitioner Company are not adversely affected by the proposed reduction of equity capital as there is no reduction in the amount payable to the creditors and no compromise or arrangement is contemplated with the creditors and they will be paid off in the ordinary course of business. The Petitioner Company has served notices upon all its creditors as on 15<sup>th</sup> August 2023, as per directions of this Hon'ble Tribunal. The Petitioner Company has not received any representations from any of its creditors or any authorities except Regional Director, Western Region, as provided for in Para 4 and 6 of the Affidavit filed by the Petitioner Company dated 18<sup>th</sup>

December, 2023 and income tax department.

8. The Regional Director (Western Region), Ministry of Corporate Affairs, Mumbai, has filed its Report dated 12<sup>th</sup> December, 2023 *inter-alia* making the following representations in Paragraph 6 and Paragraph 7(A) to 7(F) to which the Petitioner Company has filed an Affidavit-in-Reply to the representations of the Regional Director, Western Region dated 18<sup>th</sup> December, 2023. The representations by the Regional Director (Western Region) and the responses of the Petitioner Company to the same are reproduced hereunder:

<b>Para</b>	<b>Representation by the Regional Director</b>	<b>Response from the Petitioner Company</b>
6	<p><i>ROC, Mumbai in his Report No. ROC/Sec 66/206/2022-23/949 dated 08.12.2023, inter-alia mentioned that there is no inspection, investigation, inquiry, prosecution pending against the company. Further the ROC, Mumbai has made his observation at para no. 23 of his report and stated that,</i></p> <p><i>“1. Interest of the Creditors and minor shareholders/ stakeholder should be protected.</i></p> <p><i>2. Hon’ble NCLT, Mumbai Bench may be decided the matter on its merits.”</i></p>	<p>As far as the representation of the ROC Mumbai, as stated in Para 6 of the report of the Central Government is concerned, the Petitioner Company affirm that the present reduction of share capital does not envisage any compromise or arrangement with creditors, as no sacrifice is called for from the creditors. The rights of the creditors are not affected as all the creditors would be paid off in the ordinary course of business. Hence, I affirm that the interest of creditors is duly protected. Further, the Petitioner Company is a wholly-owned subsidiary of ILP Core Ventures III Pte. Ltd. and does not have any minority shareholders. Hence, the question of rights and interest of minority shareholders being affected does not arise.</p>
7 (A)	<p><i>Provisions of section 52 of the Companies Act, 2013 is reproduced as below-</i></p> <p><i>“Application of premiums</i></p>	<p>So far as the representation in paragraph 7(A) of the Report of the Regional Director is concerned, the Petitioner Company submits that</p>

<p><i>received on issue of shares.—</i></p> <p><i>(1) Where a company issued 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.</i></p> <p><i>(2) Notwithstanding anything contained in sub-section (1), the securities premium account may be applied by the company—</i></p> <p><i>(a) towards the issue of unissued shares of the company to the members of the company as fully paid bonus shares;</i></p> <p><i>(b) in writing off the preliminary expenses of the company;</i></p> <p><i>(c) in writing off the expenses of, or the commission paid or discount allowed on, any issue of shares or debentures of the</i></p>	<p>the proposed reduction is in compliance with the provisions of Section 52 of the Companies Act, 2013. The Company Petition for confirmation of reduction of share capital has been filed under Section 66 read with Section 52 of the Companies Act, 2013. Section 52 of the Companies Act, 2013 provides that “where a company issues shares at a premium, whether for cash or otherwise, a sum equal to the aggregate amount of premium received on those shares shall be transferred to a “securities premium” account <b>and the provisions of the Act relating to reduction of share capital of a company shall</b>, except as provided in this section, apply as if the securities premium account were the paid up share capital of the company”. Therefore, as can be seen, if the securities premium is used for purposes other than those specified in sub section 2 of section 52 of the Companies Act, 2013, it is deemed to be a reduction of share capital. In the instant case since the</p>
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<p><i>company;</i></p> <p><i>(d) in providing for the premium payable on the redemption of any redeemable preference shares or of any debentures of the company; or</i></p> <p><i>(e) for the purchase of its own shares or other securities under section 68.</i></p> <p><i>(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,—</i></p> <p><i>(a) in paying up unissued equity shares of the company to be issued to members of the company as fully paid bonus shares; or</i></p> <p><i>(b) in writing off the expenses of or the commission paid or discount allowed on any issue of equity shares of the company; or</i></p> <p><i>(c) for the purchase of its own</i></p>	<p>Petitioner Company is utilizing the securities premium for items other than those mentioned in sub section 2 of section 52 of the Companies Act, 2013, hence it is treated as a reduction of share capital of the Petitioner Company.</p>
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	<p><i>shares or other securities under section 68.”</i></p> <p><i>In view of the provisions of this section 52 of the Companies Act, 2013 the Petitioner shall satisfy the Hon’ble NCLT that the reduction of capital application is also fulfilling the requirements of section 52 of the Companies Act, 2013.</i></p>	
7 (B)	<p><i>Applicant to submit an Affidavit to the effect that the interest of the creditors and all stakeholders and Government Revenue are protected as well as statutory dues are paid off.</i></p>	<p>So far as the representation in paragraph 7(B) of the Report of the Regional Director is concerned, the Petitioner Company submits that the proposed reduction is for the benefit of the Petitioner Company and its shareholders and the interest of the creditors of the Petitioner Company is not adversely affected by the present Company Petition. Further, there is no compromise or arrangement with the creditors of the Petitioner Company and there is no reduction in amount payable to any of the creditors of the Petitioner Company, as their respective dues will be paid in the ordinary course of business. The Petitioner Company by way of this Affidavit</p>

		undertakes to protect the interest of its creditors, all stakeholders and Government Revenue and pay all the statutory dues in ordinary course in accordance with provisions of the law, subject to appropriate remedies available to the Petitioner Company.
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7(C) and (D)	<i>C) The tax implication if any arising out of the proposal for reduction is subject to final decision of Income Tax Authorities. The approval of the Company Petition by this Hon'ble Court may not deter the Income Tax Authority to scrutinize the tax return filed by the Company after giving effect to the proposed reduction. The decision of the Income Tax Authority is binding on the petitioner Company. Further the payment made to the shareholders shall be subject to payment of Income Tax or Capital Gain Tax, as the case may be in the hands of recipient's shareholders.</i>	So far as the representation in paragraph 7(C) & (D) of the Report of the Regional Director is concerned, the Petitioner Company submits that it shall comply with all the applicable provisions of the Income Tax Act. The Petitioner Company undertakes that approval of this Company Petition by the Hon'ble Tribunal shall not deter the Income-tax Authorities to scrutinize the Income-tax Return filed by the Petitioner Company after giving effect to the proposed capital reduction. It is further submitted that the Petitioner Company and the shareholders will be subject to the applicable tax implications arising out of the Company Petition which will be
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	<p><i>D) Further, any amount paid to the shareholders above the face value of paid-up share capital i.e. INR 10 per share is treated as deemed dividend u/s 2(22) of the Income Tax Act, 1961 to the extent paid out of general reserve (accumulated profit) and remaining amount will be transferred to capital gain in the hands of the recipient shareholders at INR 7,569 per share are being paid on 6,373 equity shares adjusted against the Securities Premium Account and therefore, the company and recipients shareholders shall undertake to pay Income Tax/TDS as per the provisions of Income Tax Act, 1961.</i></p>	<p>dealt with in accordance with the provisions of the Income Tax Act. It is further submitted that the capital gain tax, if any, or tax arising out of provisions of section 2(22) of the Income-tax Act, 1961 or any other tax implications arising out of the Company Petition in the hands of the shareholders or the Petitioner Company shall be paid / complied by them in accordance with the provisions of the Income-tax Act, 1961. Further, the decision of the Income-tax Authority shall be binding on the Petitioner Company, subject to appropriate remedies and right to appeal available to the Petitioner Company under the provisions of the Income-tax Act, 1961 or any other applicable law in this regard.</p>
7 (E)	<p><i>It is respectfully submitting that the petitioner company is having foreign shareholder, therefore petitioner company may be directed to comply with the FERA/FEMA regulation and provide approval from the RBI before approval of the scheme as</i></p>	<p>So far as the representation in paragraph 7(E) of the Report of the Regional Director is concerned, the Petitioner Company submits that the payment to the non-resident shareholder, whose shares are being reduced is in compliance with the provisions of the Foreign</p>

	<p><i>the shareholders is ILP Core Ventures III Pte Ltd is foreign entity.</i></p>	<p>Exchange Management Act, 1999 read with Foreign Exchange Management (Non-Debt Instruments) Rules, 2019, as amended from time to time (“FEMA”). As the transfer of shares pursuant to proposed reduction of share capital is in compliance with FEMA, hence no specific approval of Reserve Bank of India is required. The Petitioner Company hereby undertake to file/submit the Form FC-TRS and make necessary compliances with the Reserve Bank of India through its Authorised Dealer Category – I Bank in relation to reduction of share capital and comply with provisions of FEMA and RBI guidelines, as may be required from time to time.</p>
<p>7 (F)</p>	<p><i>It is observed the company has one corporate body shareholders namely ILP Core Ventures III Pte Ltd having shareholding of 100 %, but Company has not filed Form BEN-2 declaring name of the Beneficial Owner of the Shareholding as its</i></p>	<p>So far as the representation in paragraph 7(F) of the Report of the Regional Director is concerned, the Petitioner Company submits that ILP Core Ventures III Pte. Ltd. was the parent entity holding 100% shares of the Petitioner Company as on March 31, 2023 and as on July</p>

<p><i>shareholders on 31.03.2023 and 31.07.2023 in compliance of section 90 of the CA, 2013, thus the Petitioner Company shall undertake to comply with the requirements of Section 90 of the CA, 2013 and Companies (Significant Beneficial owners) Rules, 2018.</i></p>	<p>31, 2023. Also, none of the individual shareholders, acting alone or together, or through one or more persons or trust, holds indirectly, or together with any direct holdings, 10% or more of the shares or voting rights of the Petitioner Company, hence filing of Form BEN-2 is not applicable to the Petitioner Company. The Petitioner Company further submits that it would comply with the provisions of Section 90 of the Companies Act, 2013 read with the Companies (Significant Beneficial Owners) Rules, 2018 amended from time to time and make necessary filings with the Registrar of Companies, if required and applicable under the provisions of law. In case the Petitioner Company has not complied with the aforesaid provisions, if applicable, liberty is given to the concerned Registrar of Companies to take appropriate remedies against the Petitioner Company in accordance with law with respect to the above issue, subject to</p>
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		<p>availability of reliefs and remedies to the Petitioner Company under the applicable provisions of the Companies Act, 2013. Without prejudice to the above, the Petitioner Company shall continue to remain in existence, post the reduction of share capital becoming effective and sanction of this Company Petition shall not have any prejudicial impact on the powers and rights of the concerned Registrar of Companies in accordance with the applicable provisions of the Companies Act, 2013.</p>
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9. The representations made by the Regional Director, Western Region on behalf of the Central Government are enlisted herein in Para 8 above along with response of the Petitioner Company on the representations of the Regional Director, Western Region filed vide affidavit of the Petitioner Company on 18<sup>th</sup> December 2023. The clarifications and undertakings given by the Petitioner Company in Para 8 above are accepted by this Tribunal.
  
10. Further, the Income-tax department ('ITD') has filed its representation vide its letter dated 29<sup>th</sup> November 2023, 18<sup>th</sup> December 2023 and affidavit dated 8<sup>th</sup> March 2024 respectively. As against each of such letter/ affidavit received from ITD, the Petitioner Company submitted its response vide

affidavit dated 12<sup>th</sup> December 2023, 20<sup>th</sup> January 2024 and 16<sup>th</sup> March 2024, respectively.

11. The clarifications and undertakings given by the Petitioner Company in affidavits dated 12<sup>th</sup> December 2023, 20<sup>th</sup> January 2024 and 16<sup>th</sup> April 2024, respectively are taken on record by this Tribunal.

12. Further, in order to protect the interest of Revenue, the tax department reserves the right to carry out assessment of entities involved, as per extant provisions of the Income-tax Act, 1961 and the Petitioner Company shall pay the tax liability as may be determined by the tax department during the course of any proceedings, subject to appropriate rights and remedies available to the Petitioner Company in accordance with provisions of applicable law framed in this regard.

13. Considering the entire facts and circumstances of the case, the report filed by Regional Director (Western Region), letter and affidavits filed by the Income-tax Department, Affidavit in reply to representations of the Regional Director and income-tax department respectively filed by the Petitioner Company and on perusal of the documents produced on record, the Company Petition is allowed.

14. The Petitioner Company undertakes to file the certified copy of the order and form of minutes duly certified by the Designated Registrar of this Tribunal with the Registrar of Companies within 30 days or an extended timeline with payment of additional fees, as may be applicable, from the date of receipt of the certified Order from the Registry of this Tribunal.

15. The Petitioner Company to publish notice about registration of order and minutes by the concerned Registrar of Companies in two newspapers namely 'Business Standard' in English language and translation thereof in 'Navshakti' in Marathi language both having circulation in the State of Maharashtra within 30 days of registration.
16. All concerned regulatory authorities to act on certified copy of the order, duly certified by designated Registrar of this Tribunal.
17. The minutes set forth hereto be and is hereby approved.

#### **Form of Minutes**

*“The issued, subscribed and paid-up equity share capital of Destination Industrial Parks Private Limited is henceforth INR 2,10,780 (Indian Rupees Two Lacs Ten Thousand Seven Hundred Eighty) consisting of 21,078 (Twenty One Thousand Seventy Eight) equity shares of INR 10 (Indian Rupees Ten Only) each, reduced from INR 2,74,510 (Indian Rupees Two Lakhs Seventy-Four Thousand Five Hundred and Ten) consisting of 27,451 (Twenty Seven Thousand Four Hundred and Fifty One) equity shares of INR 10 (Indian Rupees Ten Only) each.”*

**SD/-**

**MADHU SINHA**

**Member (T)**

/Aakansha/

**SD/-**

**REETA KOHLI**

**Member (J)**