

**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH
COURT-V**

Company Petition No. 100/ND/2022

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

IN THE MATTER OF:

M/s. Paytm E-Commerce Private Limited

CIN No. U74999DL2016PTC304451

.... Petitioner Company

CORAM:

SHRI P.S.N. PRASAD, HON'BLE MEMBER (JUDICIAL)

DR. BINOD KUMAR SINHA, HON'BLE MEMBER (TECHNICAL)

Order Delivered on: 31.03.2023

For Petitioners: Mr. Satwinder Singh, Mr. Lokesh Dhyani and Ms. Ashima Jain, Advocates

ORDER

PER: DR. BINOD KUMAR SINHA, MEMBER (T)

1. The instant Company Petition is filed on behalf of M/s. Paytm E-Commerce Private Limited bearing CIN: U74999DL2016PTC304451 under Section 66 read with Section 52 of the Companies Act, 2013 and the National Company Law Tribunal (Procedure for Reduction of Share Capital of Company) Rules, 2016 seeking inter-alia following prayer(s) : -
 - a) "To confirm the reduction of issued, subscribed and paid up equity share capital of the Petitioner Company as resolved by the members' special resolution;
 - b) To approve form of minutes under sub-section (5) of Section 66 of the Act, as set out in para 26 of the instant petition, proposed to be filed

C.P. No. 100/ND/2022

Date of Order: 31.03.2023

with the Registrar of Companies, National Capital Territory of Delhi and Haryana; and/or

- c) Pass such further order or orders as may be deemed fit and proper by this Hon'ble Tribunal.”

2. The Petitioner Company submits that the Petitioner Company was incorporated on 16.08.2016 having registered office situated at 136, First Floor, Devika Tower, Nehru Place, Delhi – 110019 and is engaged in the business of developing and providing services in the field of electronic commerce, online market place, web based or related technology and applications. The Petitioner Company further submits that as per the provisional financial statements as on December 31, 2021, as certified by the management of the Petitioner Company, the Company has a share premium account of Rs. 5,363.38 crores and total net worth after considering the accumulated losses is Rs. 1,394.63 crores.

3. The Petitioner Company submits that the capital structure of the Petitioner Company as on December 31, 2021 is as under:

Authorised Share Capital	Amount (Rs.)
30,00,000 equity shares of Rs. 10 each	3,00,00,000
Total	3,00,00,000
Issued, Subscribed and Paid-up Share Capital	Amount (Rs.)
21,27,775 Equity Shares of Rs. 10 each fully paid up	2,12,77,750
Total	2,12,77,750

4. The Petitioner Company submits that the existing shareholding pattern of the Petitioner Company is as follows:

S. No.	Name Of Shareholder	No. Of Shares	Percentage Of Shares
1.	Vijay Shekhar Sharma	1,93,115	9.08%

2.	Alibaba.com Singapore E-Commerce Private Limited (" <i>Alibaba</i> ")	6,02,937	28.34%
3.	Antfin (Netherlands) Holding B.V. (" <i>Antfin</i> ")	3,18,714	14.98%
4.	SB Investment Holdings (UK) Limited	4,22,586	19.86%
5.	SAIF III Mauritius Company Limited	1,94,023	9.12%
6.	SAIF Partners India IV Limited	79,110	3.72%
7.	Elevation Capital V Limited	91,458	4.30%
8.	Elevation Capital V FII Holdings Limited	8,720	0.41%
9.	eBay Singapore Services Private Limited	1,28,028	6.02%
10.	Others	89,084	4.19%
Total		21,27,775	100%

5. The Petitioner Company submits that the Petitioner Company seeks to reduce its existing issued, subscribed and paid-up equity share capital in terms of the provisions of Section 66 read with Section 52 of the Act read with NCLT Capital Reduction Rules, currently consisting of 21,27,775 equity shares of face value Rs. 10/- each fully paid-up aggregating to Rs. 2,12,77,750/- by cancelling and extinguishing 9,21,651 subscribed and paid-up equity shares of face value of Rs.10/- each fully paid up, **which are held by Alibaba and Antfin, non-resident shareholders ('Specified Shareholders')** along with securities premium account to the tune of Rs. 449/- per equity share aggregating to Rs. 41,38,21,299/-.
6. The Petitioner Company submits that the said issued, subscribed and paid-up share capital, so reduced, may stand further increased, if the existing employees and key managerial personnel acquire equity shares of the Company on account of exercise of their rights on vested ESOPs, which in any case will not exceed 1,60,724 equity shares of Rs. 10/- each fully paid up or on account of any corporate action.

7. The Petitioner Company submits that the specified shareholders are offering the following number of shares for the purpose of reduction:

S. No.	Name Of Shareholder	No. Of Shares	Percentage Of Shares
1.	Alibaba.com Singapore E-Commerce Private Limited (" <i>Alibaba</i> ")	6,02,937	28.34%
2.	Antfin (Netherlands) Holding B.V. (" <i>Antfin</i> ")	3,18,714	14.98%
	Total	9,21,651	43.32%

8. The Petitioner Company submits that post the reduction of share capital, the shareholding pattern and the issued, subscribed and paid up share capital of the Petitioner Company shall be as under:-

S. No.	Name of Shareholder	No. of Shares	Percentage of Shares
1.	Vijay Shekhar Sharma	1,93,115	16.01%
2.	SB Investment Holdings (UK) Limited	4,22,586	35.04%
3.	SAIF III Mauritius Company Limited	1,94,023	16.09%
4.	SAIF Partners India IV Limited	79,110	6.56%
5.	Elevation Capital V Limited	91,458	7.58%
6.	Elevation Capital V FII Holdings Limited	8,720	0.72%
7.	eBay Singapore Services Private Limited	1,28,028	10.61%
8.	Others	89,084	7.39%
	Total	12,06,124	100%

9. The Petitioner Company submits that as on 16.05.2022, the Petitioner Company had no secured creditors and had 410 unsecured creditors having an outstanding balance of Rs. 14,00,09,898/-.

10. The Petitioner Company submits that Article 51 of the Article of Association ("AOA") provides the power to reduce its capital as well as securities/ share premium account in any manner. The Board of Directors of the Petitioner Company had considered and unanimously approved the proposed reduction of issued, subscribed and paid-up share capital in their meeting held on May 13, 2022. The members of the Petitioner Company in its Extra-Ordinary General Meeting held on May 23, 2022, had unanimously passed following resolution in accordance with section 66 read with section 52 of the Companies Act, 2013:

"To Consider and Approve Reduction of Paid-Up Equity Share Capital and Securities Premium Account As Special Resolution Under The Provisions Of Section 66 Read With Section 52 Of The Companies Act, 2013"

"RESOLVED UNANIMOUSLY THAT pursuant to the provisions of Section 66 read with Section 52 and any other applicable provisions, if any, of the Companies Act, 2013 ("Act") read with National Company Law Tribunal (Procedure for Reduction of Share Capital of Company) Rules, 2016 ("Reduction Rules) (Including any statutory modification(s), amendment(s) or re-enactment(s) thereof for the time being in force), pursuant to the provisions of the Memorandum and Articles of Association of the Company, and subject to the approval of the Hon'ble National Company Law Tribunal, Bench at New Delhi ("Tribunal"), and subject to such other requisite approvals, consents, permissions and/or sanctions of any appropriate authority, body or Institution (hereinafter collectively referred to as the "Concerned Authorities" and subject to such terms, conditions, guidelines or modifications, if any, as may be prescribed, imposed, stipulated in this regard by the Hon'ble Tribunal and/or the Concerned Authorities, from time to time, while granting such approvals, consents, permissions and/or sanctions and which may be agreed by the Board of Directors of the Company (hereinafter referred to as "Board" which expression shall be deemed to include any committee of directors constituted by the Board) consent of the members of the Company be and is hereby accorded to reduce the issued, subscribed and paid-up share capital of the Company from Rs. 2, 12, 77, 750/- (Rupees Two Crore Twelve Lakhs Seventy-Seven Thousand Seven Hundred and Fifty only) consisting of 21,27,775 (Twenty-One Lakhs Twenty-Seven Thousand Seven Hundred and Seventy-Five only)

equity shares of face value of Rs.10/- (Rupees Ten only) each fully paid up to 1,20,61,240 (Rupees One Crore Twenty Lakhs Sixty-One Thousand Two Hundred Forty only) consisting of 12,06,124 (Twelve Lakhs Six Thousand One Hundred Twenty-Four) equity shares of face value of Rs. 10/- (Rupees Ten only) each fully paid up by cancelling and extinguishing, in aggregate, 9,21,651 (Nine Lakh Twenty-One Thousand Six Hundred and Fifty-One) equity shares of face value Rs. 10/- (Rupees Ten only) each fully paid-up held by Alibaba.com Singapore E-commerce Private limited and Antfin (Netherlands) Holding B.V. (hereinafter (referred to as "Specified Shareholders") along with required balance of securities premium account.

RESOLVED FURTHER THAT the details of the equity shares of the Specified Shareholders which are proposed to be reduced are as under:

Name of Specified Shareholder	No of Shares	Percentage of shares
Alibaba.com Singapore E-commerce Private Limited	6,02,937	28.34%
Antfin (Netherlands) Holding B.V.	3,18,714	14.98%
Total	9,21,651	43.32%

RESOLVED FURTHER THAT post obtaining all approvals for the proposed reduction of the share capital of the Company including the approval of the Tribunal, the issued, subscribed and paid-up share capital of the Company, shall stand reduced to the extent of the face value of the shares so extinguished and cancelled (as set out above).

RESOLVED FURTHER THAT the valuation report. dated May 13, 2022, issued by Prabhakar Kumar, Registered Valuer (Registered Valuer No. IBBI/RV/02/2021/14527) and valuation report dated May 12, 2022 issued by Fastrack Finsec Private limited, Category I Merchant Banker registered with the Securities and Exchange Board of India, as tabled be and is hereby taken on record.

RESOLVED FURTHER THAT upon the said reduction becoming effective, the Specified Shareholders shall be paid a sum of Rs. 459/- per equity share, subject to any applicable withholding taxes.

RESOLVED FURTHER THAT any such payment in relation to the reduction of shares held by Specified Shareholders shall not be more than the price permissible to be paid under the applicable provisions of Foreign Exchange Management Act, 1999 and rules and regulations made thereunder.

RESOLVED FURTHER THAT Mr. Vijay Shekhar Sharma and Mr. Abhishek Rajan, Directors of the Company and Ms. Vaishali Panjwani, Company Secretary or any other official as may be as

authorized by the Board, be and are hereby jointly/severally authorized on behalf of the Company to do all such other acts, deeds, matters and things as may be considered necessary or desirable in connection with or incidental thereto for giving effect to the aforesaid/resolution including but not limited to:

- (i) making; preparing, affirming and filing, applications, petitions, affidavits, declarations form of minutes of reduction of share capital and such other documents as may be necessary with the Hon'ble Tribunal for Its confirmation/ approval for such reduction and in this regard for sign, execute, affirm, deliver and/or file all such applications, petitions, pleadings, notices, e-forms, advertisements and other documents, which are necessary or incidental thereto.*
- (ii) engaging, hiring, appointing, consulting one or more advisors and other professionals including any counsel; registered: valuer, chartered accountant, advocate, legal advisors, attorney, representatives and any other persons to avail advice, recommendations, inputs on the proposed reduction of equity share capital, to draft the necessary applications/documents, to represent and act on behalf of the Company in the proceedings before the Hon'ble Tribunal any matter related hereto and to authorize them to exercise all or any of such powers which they are entitled to exercise for reduction of share capital;*
- (iii) authenticate all the necessary documents as 'certified copies' or in any other manner as may be required, including affixing the Common Seal of the Company on any documents in connection with the above resolution;*
- (iv) to provide necessary accounting treatment in the application/petition/ any other document required for implementing reduction of share capital and obtain the necessary certificate of accounting treatment under Section 133 of the Act from the statutory auditors, confirming that the said accounting treatment specify in the application/petition/ any other document-required is as per the accounting standards applicable to the Company.*
- (v) withdraw the application/petition filed before the Tribunal for the capital reduction at any stage, in case any changes and/or modifications suggested/ required to be made in the application/petition or any condition imposed, whether by any shareholder, creditor, Tribunal and /or any other regulatory authority are, in their view, not in the interest of the Company and/ or if the application /petition cannot be implemented otherwise, and to do. all such deeds, acts and things as any of them may deem necessary and desirable in connection therewith and incidental thereto.*

- (vi) call for the bank account details of the. Specified Shareholders of the Company for discharging consideration.*
- (vii) affixing the common seal of the Company in accordance with the provisions of the Articles of Association of the Company on any documents in. connection with the above resolution, as may be required;*
- (viii) informing depository participant and registrar of agent about such reduction of equity share capital for updating their records;*
- (ix) settling all questions, difficulties or doubts that may arise in connection with the reduction of paid-up equity share capital as it may, in its absolute discretion, deem fit;*
- (x) doing all acts, deeds, and things and to take all such steps as may be considered necessary and expedient to give effect to this resolution arid for the purpose of ensuring compliance with the directions that may be given by Hon'ble Tribunal;*
- (xi) filing certified copy of order of Hon'ble Tribunal with Registrar of Companies, NCT of Delhi and Haryana; and*
- (xii) to delegate all or any of the aforesaid powers to any other person by way of a valid power of attorney”*

11. This Tribunal vide its order dated 13.07.2022 had directed the Petitioner Company to issue notice to the Regional Director, and Registrar of companies, cause publication of notice in the prescribed form in Delhi editions of newspapers, namely, Business Standard (English) and Jansatta (Hindi) and notice of petition to the secured and unsecured creditors with acknowledgment sent by the Registry/ Speed post as well by E-mail and file proof of service.

12. The Petitioner Company had filed a compliance affidavit before this Hon'ble Tribunal on July 29, 2022 in relation to the compliance of the directions contained in the Tribunal's order dated 13.07.2022 with respect to the service of Notice to Regional Director, Registrar of Companies, Creditors of the Applicant Company and Publication in newspapers.

13. Further, in consonance with the provisions of this Act as well as the rules framed thereunder, the Petitioner Company have also filed a certificate dated 27.05.2022 from the Statutory Auditor issued to the effect that the accounting treatment for the reduction of Share Capital is in conformity

with the Accounting Standards with respect to the same as specified by the Central Government read with Section 133 of the Companies Act, 2013. The copy of certificate by the Statutory Auditor certifying the accounting treatment proposed is annexed as Annexure –H (Page No. 220-223) of the present Company Petition.

14. The Regional Director's report was filed on 13.12.2022 with this Tribunal. The observations by the Regional Director are laid down in Para 8 of Regional Director's report and was communicated to the Petitioner Company vide letter dated 16.11.2022. The Petitioner Company filed its response to the Regional director. The observations of the Regional Director and the response of the Petitioner Company are tabulated below:

Para	Observations in the RD Report	Response of the Petitioner Company
8(1)	<i>Refer to Emphasis of Matter in the auditor's report on the financial statements as at 31.03.2021. In Note 30 which describes the management's evolution of future business operations and the consequent settlement of certain advances. The assumptions used for estimating future business operations may differ depending on actual developments. Auditor's opinion is not modified in respect of this matter. It may be noted that 'Emphasis of Matter' paragraph forming part of the auditor's report is</i>	<i>The auditors of the Petitioner Company as per their professional judgement, as part of the 'Emphasis of Matter' paragraph have highlighted that the time estimates made by the Petitioner Company in Note 30 to the financial statements may differ based on actual developments. It does not, in any manner indicate any qualification by the auditor. Further, it is submitted that it is only a matter which was pertaining to the business operations of the Petitioner Company and 'Emphasis of Matter' was provided by the auditors' consequent to the note given by the Petitioner Company for the members to take cognizance of the same. The aforesaid observations are only a matter of record which is duly provided by</i>

	<p><i>typically used by auditors to highlight matters which have already been appropriately disclosed by a company as part of its notes to the financial statements and which the auditor considers important to re-emphasize for the stakeholders understanding of the financial statements.</i></p>	<p><i>the Petitioner Company and its auditors for mere compliance purposes and accordingly this has no impact on the capital reduction proposed by the Petitioner Company.</i></p>
<p>7(2) & 7(3)</p>	<p><i>Reference may made to note no. 2 of the financial statement for F.Y. 2020-21, where details of losses to the tune of Rs.502.42 crore has been provided. In the previous year, the company had suffered a loss of Rs.478.37 crores.</i></p> <p><i>The total cash and cash equivalent on 31.03.2021 as per the cash flow statement in Rs. 88.31 crores. Therefore, the interest of the creditors needs to be ensured at the time of selective reduction of capital.</i></p>	<p><i>It is submitted that it is a settled law that provisions of Section 66 of CA 2013 give liberty to all companies who have issued shares, to decide the mode of reducing their share capital. The reduction of share capital may be brought about in any way including but without restricting the generality of purpose and manner for the reduction of paid-up share capital of a company. Sub-section (1) of Section 66 of CA 2013 expressly provides that a company may reduce its share capital 'in any manner' and above-mentioned modes of reduction are only illustrative in nature and not exhaustive.</i></p> <p><i>Further, in terms of National Company Law Tribunal (Procedure for reduction of share capital of a company) Rules, 2016, the pre-requisite for reduction of share capital is for shareholders to pass the special resolution and also it is mandated for the company to</i></p>

secure the interest of the creditors, if any of the creditors of the Company has any objection to the proposed reduction. In the instant case, the shareholders have passed the special resolution in its meeting held on May 23, 2022. Further, there were no secured creditors and due notices were given to the unsecured creditors of the Company in terms of the provisions of Section 66 read with National Company Law Tribunal (Procedure for reduction of share capital of Company) Rules, 2016.

The Company has not received any objection from any of the unsecured creditors. There is nothing in the provisions that restricts the loss-making company to undertake reduction of share capital. Similar matter has recently been approved by the Hon'ble New Delhi Bench of Tribunal in Company Petition 11/ND/2022 in the matter of selective reduction of share capital of Ahlcon Parenterals (India) Limited wherein it has approved the selective reduction of shares of non-promoter equity shares of the company and consequent payment to such exiting shareholders, and the matter was examined by your good offices. The said company was also having huge accumulated losses. As was discussed above, as on December 31, 2021, the Petitioner Company has current assets including cash and bank balances amounting to Rs.593.36 crores as against

		<p><i>the total capital reduction consideration pay-out of Rs.42.30 crores and the creditors only to the tune of Rs. 14 crores, which fortify the fact that interest of the creditor is fully secured and the said reduction does not prejudice the interest of any of the unsecured creditors.</i></p> <p><i>Further, the Petitioner Company hereby undertakes to appropriately discharge the liabilities pending towards its creditors, as and when they become due and payable in the normal course of its business, subject to right to appeal available under various applicable laws.</i></p>
7(4)	<p><i>Since the outgo in case of the proposed reduction will go in the hands of foreign resident, the compliance of FEMA to be ensured.</i></p>	<p><i>In the instant case, Form FC-TRS or such other applicable form as may be prescribed under the FEMA as amended from time to time, would be filed by the Petitioner Company for reporting such capital reduction.”</i></p>

15. This Tribunal on 24.01.2023, had sought the following clarifications from the Petitioner Company:-

- (i) Issue price of shares which are proposed to be reduced/extinguished; and
- (ii) Compliance related to Foreign Exchange Management Act for the Proposed reduction of Share Capital.

16. The Petitioner Company had filed an Interlocutory Application i.e., I.A./48(ND)/2023 in compliance of this Tribunal order dated 24.01.2023 wherein the following clarifications were provided:-

- (i) With respect to point (i), the Applicant Company had placed on record details of the original issuance price in respect of the shares held by the Specified Shareholders certified by the Company Secretary of the Applicant Company and the summary of the total issue price received by the Petitioner Company in respect of the shares presently held by the specified shareholders and the amount to be paid against the reduction of said shares is as under:-

Total shares to be reduced	Amount received as face value in respect of shares presently held by Specified Shareholders (INR)	Amount received as premium in respect of shares presently held by specified shareholders (INR)	Total issuance price received in respect of shares presently held by Specified Shareholders (INR)	Considerations to be paid for such reduction of shares (INR)
9,21,651	92,16,510	14,46,19,30,784	14,47,11,47,294	42,30,37,809

- (ii) With respect to point (ii), the Petitioner Company submits that as per the provisions of Foreign Exchange Management Act, 1999 and Rules & Regulations made thereunder ("FEMA"), any payment made to a non-resident shareholder(s) of an Indian company pursuant to capital reduction is subject to compliance with pricing guidelines prescribed under FEMA and the price proposed to be paid to the Specified Shareholders (being non-residents) is within the limits prescribed and as such permissible, under the provisions of FEMA.
- (iii) It is submitted that the provisions of rule 21(2)(c) of Foreign Exchange Management (Non- Debt Instruments) Rules, 2019 ("Non-Debt Rules"), wherein the price of equity instruments of an Indian Company transferred by a person resident outside India to a person resident in India shall not exceed the valuation derived by internationally accepted pricing methodology for valuation on an arm's length basis duly certified by the Chartered Accountant or a Merchant Banker registered with Securities and Exchange Board of India or a practising Cost Accountant.

- (iv) The consideration to be paid to the Specified Shareholders is Rs. 459/- per share, inclusive of premium of Rs. 449/- per share, which is well within the aforesaid maximum cap price and is fully compliant with the pricing guidelines provided under the Non- Debt Rules. The Petitioner Company had placed on record the valuation report certified by Mr. Prabhakar Kumar Registered valuer and by the Category I Merchant Banker Registered with SEBI as Annexure-G (Page no. 198-219) of the present application.
- (v) The valuation report certified by Mr. Prabhakar Kumar Registered valuer appointed to determine the fair value is as follow:-

8. CONCLUSION

It would be in the light of the aforesaid, and after taking into consideration the principles of valuation as propounded by various authorities, that one would have to consider the fair value of the equity shares of the Company.

For the reasons set out earlier in this report, we have valued the equity shares of the Company using the CCM and CTM method as follows

Methods	Equity Value (INR Million)	Weight
Comparable Company multiple (CCM)	22,616	1
Comparable transaction multiple method (CTM)	23,394	1
Weighted Average Value	23,005	
Total Number of shares	22,88,499	
Value per share (INR)	10,052	

On consideration of all the relevant factors and issues discussed in our analysis, as per the FEMA Regulations, for the purpose of the Proposed Transaction, the fair value of fully dilutive share capital of the Company on an arm's length basis as at 31 December 2021, works out to INR 23,005 Million and the fair value of the security of INR 10/- each fully paid up on an arm's length basis as at 31 December 2021, works out to INR 10,052/- (Indian Rupees Ten Thousand and Fifty Two Only).

- (vi) The valuation report certified by M/s. Fast Track Finsec Private Limited, Merchant Banker appointed to determine the fair value is as follow:-

CONCLUSION

It would be in the light of the aforesaid, and after taking into consideration the principles of valuation as propounded by various authorities, that one would have to consider the fair value of the equity shares of the Company.

For the reasons set out earlier in this report, we have valued the equity shares of the Company using the CCM and CTM method as follows

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Weighted Average Value	23,005	
Total Number of shares	22,88,499	
Value per share (INR)	10,052	

On consideration of all the relevant factors and issues discussed in our analysis, as per the FEMA Regulations, for the purpose of the Proposed Transaction, the fair value of fully dilutive share capital of the Company on an arm's length basis as at 31 December 2021, works out to INR 23,005 Million and the fair value of the security of INR 10/- each fully paid up on an arm's length basis as at 31 December 2021, works out to INR 10,052/- (Indian Rupees Ten Thousand and Fifty Two Only).

17. This Tribunal vide its order dated 07.03.2023 had directed the Petitioner Company to provide clarification on two points viz. (i) Total Number of Equity Shareholders and the rationale for paying back shares at a premium of Rs. 449 per equity shares. The Applicant Company in compliance of this Tribunal's order dated 07.03.2023 had filled an additional affidavit dated 14.03.2023 wherein explanations and clarifications provided to the Tribunal's query. The same are summarized herein below:-

S.No.	Query/Observation of Tribunal raised vide order dated 07.03.2023	Explanations and clarifications submitted by the Applicant Company vide additional affidavit dated 14.03.2023
1	How the total number of Equity Shares as per the	It is hereby further submitted that the shareholders of the Petitioner Company

	<p>valuation report is 22,88,499 Equity Shares whereas as per the MCA master data and submissions of the Applicant, the Equity Share (issued, subscribed and paid-up) of the Company are 21,27,775 Equity Shares.</p>	<p>had approved Employee Stock Option Scheme(s) named as "ESOP 2017" and "ESOP 2019" (collectively hereinafter referred to as "ESOP Scheme"). Pursuant thereto, the overall Employee Stock Options: ("ESOPs") presently available under the ESOP Scheme is 1,60,724 equity shares. It may be noted that ESOPS represents unissued potential share capital base of a company which may eventually get issued in future based on conditionalities. Hence, as and when shares get issued against the ESOPs, consequently the issued, subscribed and paid-up equity shares of the Petitioner Company would stand increased from 21.27,775 equity shares of Rs. 10 to maximum of 22,88,499 equity shares of Rs. 10.</p>
2	<p>Considering on what basis and rationale the Applicant Company had decided to cancel and extinguish 9,21,651 subscribed and paid-up equity shares of face value of Rs. 10/- each fully paid up, which are held by Alibaba and Antfin, non-resident shareholders ('Specified Shareholders') at a</p>	<p>It is hereby submitted that the Petitioner Company's business profile is to engage in Indian E-commerce business and this sector has experienced growing competition which demands significant growth capital and long-term commitment from the investors. The Specified Shareholders had requested for an exit from the Petitioner Company.</p> <p>It may be noted that the exit consideration of INR 459/- per equity share being offered to the Specified Shareholders is a mutually agreed</p>

	<p>premium of Rs. 449 per equity whereas the value per share comes at Rs. 10,052/- as per the report of the Registered valuer and Merchant Banker</p>	<p>negotiated price, based on commercial discussions.</p> <p>It is pertinent to note while making a pricing decision in such exit transactions, three (3) factors are vital for consideration: a) whether it is agreeable to the exiting shareholder(s); b) whether it is compliant with applicable laws including FEMA (as defined hereinafter); c) whether it would be acceptable to the Board of directors/ other shareholders of the company.</p> <p>It is submitted that since exit consideration has been commercially negotiated and agreed, it would be crucial to check if the remaining factors are satisfied. In this regard, it may be noted that the exit consideration of INR 459/- per equity share being proposed to be paid by the Petitioner Company to the Specified Shareholders is fully compliant with the Foreign Exchange Management Act. 1999 (FEMA) including the pricing guidelines therein,</p> <p>The reliance is placed on the decision of the Hon'ble Andhra Pradesh High Court in the matter of IL&FS Engineering and Construction Co Limited v. Wardha Power Company Limited, wherein it was reiterated that court shall not intervene in the commercial wisdom of the stakeholders and the company.</p>
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18. Further, the Petitioner Company undertakes that while remitting the consideration to Specified Shareholders, the Petitioner Company shall adhere to the applicable provisions of Income Tax Act, 1961 as well as the withholding tax requirements.
19. The Hon'ble NCLAT in case of **M/s. Precious Energy Services Limited [Company Appeal (AT) No. 17 of 2021; judgement dated 28.07.2022]**, while approving the reduction of share capital observed as follow:-

7. The Madras High Court in 'Re. Panruti Industrial Company (Private) Ltd.', AIR 1960 Mad. 537, held as follows:

"...the question of reduction of capital has been treated as a matter of domestic concern, one for the decision of the majority of the shareholders of the company."

.....

8. The principles distilled from the aforesaid precedents were summarized in 'Reckitt Benckiser (India) Ltd. (CP 206 of 2004) (Delhi High Court)' that has further been upheld by several courts:

"(i) The question of reduction of share capital is treated as matter of domestic concern, i.e. it is the decision of the majority which prevails. (ii) If majority by special reduction decides to reduce share capital of the Company, it has also the right to decide as to how this reduction should be carried into effect..."

11. It is seen from the record that the Reduction of the Share Capital was approved by the Shareholders of the Appellant Company unanimously by way of a Special Resolution with the objective of reducing the overall weighted average cost of Capital and improving the earnings per share. In 'Reckitt Benckiser (India) Ltd. (Supra), the Hon'ble Delhi High Court has upheld the view that "the question of reduction of Share Capital will be treated as a matter of domestic concern i.e., it is the decision of the majority which prevails. If majority by Special Reduction decides to reduce the Share Capital of the Company, which also has the right to decide as to how this reduction should be carried into effect..."

In the instant case, admittedly, the reduction of this Share Capital was approved unanimously by the Shareholders by way of a Special Resolution.

14. It is seen from the record that the Company has complied with all the statutory requirements as per the directions of the Tribunal and has also filed necessary Affidavits to that effect. It is also pertinent to mention that

none of the Creditors objected to the reduction of the Capital. Section 66(1)(b) of the Act enables a Company to reduce its Share Capital 'in any manner' provided it is approved by the majority of Shareholders through a Special Resolution Relevant extracts of Section 66(1) is reproduced hereunder for ready reference: "66(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 Company Appeal (AT) No. 17 of 2021 memorandum by reducing the amount of its share capital and of its shares accordingly;" It is observed that section 66(1) permits the Company to reduce its share capital "in any manner".

20. The Petitioner Company is directed to comply with all the applicable regulatory compliances as specified under the provisions of FEMA while remitting payment to the Specified Shareholders. The amount to be paid to the Specified Shareholders pursuant to the said reduction shall be subject to applicable withholding taxes and other applicable provisions made in the law.
21. In view of the foregoing discussion, we are of the view that it is just and proper to confirm the reduction of paid-up equity share capital of the Petitioner Company as resolved by the members of the Company by passing a special resolution.
22. While approving the Reduction of share capital as above, it is clarified that this order should not be construed as an order in any way granting exemption from payment of stamp duty, taxes including any withholding taxes arising out of the proposed reduction in capital or any other charges, if any payment is due or required in accordance with law or in respect to any permission/ compliance with any other requirement which may be specifically required under any law. Further all compliances as are required to be undertaken by the Petitioner Company under FEMA, Income Tax Act, 1961 and other applicable laws, upon

this order confirming reduction of share capital and securities premium account shall be undertaken and duly complied with.

23. This Tribunal also approves the proposed Form of Minutes set out in Paragraph 26 of the Petition and as extracted below.

This application is disposed of accordingly.

FORM OF MINUTES

"The issued, subscribed and paid-up equity share capital of Paytm E-Commerce Private Limited ("Company") is henceforth Rupees 1,20,61,240/- (Rupees One Crore Twenty Lakh Sixty-One Thousand Two Hundred Forty only) divided into 12,06,124 (Twelve Lakh Six Thousand One Hundred and Twenty Four) equity shares of Rs. 10/- (Rupees Ten only) each reduced from Rs. 2,12,77,750/- (Rupees Two Crore Twelve Lakh Seventy-Seven Thousand Seven Hundred Fifty only) divided into 21,27,775 (Twenty One Lakh Twenty Seven Thousand Seven Hundred and Seventy Five) equity shares of Rs. 10/- (Rupees Ten only) each by reducing an amount of Rs. 92, 16, 510/- (Rupees Ninety-Two Lakh Sixteen Thousand Five Hundred Ten only) divided into 9,21,651 (Nine Lakh Twenty-One Thousand Six Hundred Fifty One) equity shares of Rs. 10/- (Rupees Ten only) each. The issued, subscribed and paid-up share capital, so reduced, can be considered as further increased to the extent, if, during the interregnum period the existing employees and key managerial personnel acquire equity shares of the Company on account of exercise of their rights on vested ESOPs pursuant to ESOP 2017 and ESOP 2019, which in any case shall not exceed 1,60,724 (One Lakh Sixty. Thousand Seven Hundred Twenty-Four) equity shares of Rs. 10/- (Rupees Ten only) each fully paid up or on account of any corporate action undertaken after May 23, 2022, i.e. date of shareholder's approval resulting in further increase of issued, subscribed and paid up share capital."

Sd/-

**(DR.BINOD KUMAR SINHA)
MEMBER (T)**

Sd/-

**(SH. P.S.N PRASAD)
MEMBER (J)**