

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH

C.P. 194 (MB) of 2023

In the matter of
Section 66 r/w Section 52
of The Companies Act, 2013 and the
Rule 2 of
The
National Company Law Tribunal
(Procedure for Reduction of Share
Capital) Rules, 2016;

AND

In the matter of
Reduction of Share Capital

**Aavishkaar Venture Management Services
Private Limited**

CIN: U74140MH2006PTC160551 ... *Petitioner Company*

Order delivered on 15.02.2024

Coram:

Shri Prabhat Kumar
Hon'ble Member (Technical)

Justice V.G. Bisht (Retd.)
Hon'ble Member (Judicial)

Appearances (through)

For the Petitioner(s) : Mr. Hemant Sethi a/w Ms. Tanaya
Sethi, Advocates

For the Regional Director: Mr. Tushar Wagh, Deputy Director,
Western Region, Mumbai

ORDER

1. Heard Learned Counsel for the Petitioner Company and the representative from the Regional Director (WR). No objector has come before the Tribunal to oppose the Petition and nor has any party controverted any averments made in the Petition.
2. The Learned Counsel for the Petitioner Company submits that this Petition is for confirmation of special resolution passed by the equity shareholders of the Petitioner Company for cancellation, extinguishment and reduction of fully paid-up share capital of Rs. 1,11,81,840/- (Rupees One Crore Eleven Lakh Eighty One Thousand Eight Hundred Forty Only) divided into 11,18,184 (Eleven Lakh Eighteen Thousand One Hundred Eighty Four) Equity Shares of Rs. 10/- each (Rupees Ten Only) and the securities premium account of the Petitioner Company will be reduced by an amount of Rs. 371,57,41,437/- (Indian Rupees Three Hundred Seventy One Crore Fifty Seven Lakh Forty One Thousand Four Hundred Thirty Seven only), by returning to the respective equity shareholder an amount of Rs. 372,69,23,277/- (Indian Rupees Three Hundred Seventy-Two Crore Sixty-Nine Lakh Twenty Three Thousand Two Hundred Seventy Seven Only) by mode other than cash (i.e. by distributing 1,75,04,095 equity shares of Arohan (“Arohan Distributable Shares”) and 1,35,66,688 equity shares of Ashv (“Ashv Distributable Shares”)) as per below table. The said special resolution was approved by equity shareholders of the Petitioner Company in the Extra Ordinary General Meeting held on 19 June 2023.

S. No.	Foreign Investor	Capital Reduction Shares	Consideration (in INR)	Gross Arohan Distributable Shares at INR 123.785/share	Gross Ashv Distributable Shares at INR 115/share	Net distribution of Arohan shares*	Net distribution of Ashv shares*
1.	TIAA	4,77,768	1,59,24,07,582	74,78,999	57,96,658	74,40,774	57,55,513
2.	FMO	2,63,905	87,95,99,142	41,31,179	32,01,903	41,17,102	31,86,751
3.	TMF	1,88,255	62,74,56,610	29,46,951	22,84,057	28,83,349	22,15,596
4.	TFSF	1,88,256	62,74,59,943	29,46,966	22,84,070	28,91,282	22,24,133
Total		11,18,184	3,72,69,23,277	1,75,04,095	1,35,66,688	1,73,32,507	1,33,81,993

** The difference between gross and net distribution of shares of Arohan and Ashv respectively is on account of shares retained by AVMS to meet its withholding tax liability in accordance with applicable laws. Accordingly, the Foreign Investors upon reduction of share capital shall receive the net distribution of shares shown herein above.*

3. The Learned Counsel for the Petitioner Company states that the rationale for reduction of Share Capital is as follows:
 - I. The Petitioner Company was incorporated on 17 March 2006. There have been several changes in the issued, subscribed and paid up share capital of the Petitioner Company from the year 2006 to 2023 after several rounds of investments made by promoters, employees and certain investors. The identified investors viz. Triodos SICAV II acting on behalf of and for the benefit of its sub-fund Triodos Microfinance Fund (TMF), Legal Owner Triodos Funds B.V. in its capacity as legal owner of Triodos Fair Share Fund (TFSF), Teachers Insurance and Annuity Association of America (TIAA) and Nederlandse Financierings-Maatschappij Voor Ontwikkelingslanden N.V (FMO) (collectively “Identified Investors”) have made their

respective investments in the Petitioner Company by subscribing to equity shares and/or certain compulsorily convertible instruments of the Petitioner Company (which have subsequently been converted into equity shares of the Petitioner Company).

II. The Identified Investors have the following shareholding in the Petitioner Company: Triodos SICAV II acting on behalf of and for the benefit of its sub-fund Triodos Microfinance Fund holds 1,88,255 equity shares, Legal Owner Triodos Funds B.V. in its capacity as legal owner of Triodos Fair Share Fund holds 1,88,256 equity shares, Teachers Insurance and Annuity Association of America holds 4,77,768 equity shares and Nederlandse Financierings-Maatschappij Voor Ontwikkelingslanden N.V holds 2,63,905 equity shares in the Petitioner Company.

III. As on the date of filing this Petition, the Petitioner Company holds 23,426,590 equity shares in the share capital of Arohan Financial Services Limited (“Arohan”), and 19,036,538 equity shares and 1,147,052 compulsorily convertible preference shares in the share capital of Ashv Finance Limited (“Ashv”). Intellectual Capital Advisory Services Private Limited (“ICap”), a subsidiary of the Petitioner Company in which the Petitioner Company holds 98.37% of the share capital, holds 16,472,146 equity shares in the share capital of Arohan and 11,861,955 equity shares in the share capital of Ashv.

Arohan is an Indian unlisted public limited company which is registered with the RBI as ‘Non-Banking Financial Company – Non-Deposit Taking Systemically Important - Micro Finance Institution’ and holds a valid, existing registration

bearing the number B.05.02932. Arohan is engaged in providing microfinancing (collateral-free) loan to borrowers whose annual household income does not exceed Rs. 3,00,000 and EMI repayment of such borrower from one or more lenders does not, in the aggregate, exceed Rs. 1,50,000.

Ashv is an Indian unlisted public limited company which is registered with the RBI as 'Non-Banking Financial Company – Non-Deposit Taking Systemically Important – Investment and Credit Company' and holds a valid, existing registration bearing the number B-13.02376. Ashv is engaged in the business of providing MSME loans.

- IV. The Identified Investors have expressed their intention to exit from the Petitioner Company.
 - V. Therefore, considering the overall interest of the Petitioner Company and all its stakeholders, it has been mutually agreed to implement a reduction of the share capital of the Petitioner Company, held by the Identified Investors, as provided under Section 66 read with Section 52 of the Companies Act, 2013 read with the National Company Law Tribunal (Procedure for Reduction of Share Capital of Company) Rules, 2016, as amended (the "Rules") for a consideration of Rs. 372,69,23,277/- which shall be discharged by distribution of certain equity shares of Arohan and Ashv held by the Petitioner Company in the manner set out above.
5. The shareholding pattern of the Petitioner Company pre and post the reduction of share capital will be as follows:
- Equity Shares face value of Rs. 10/ each fully paid-up**

Name of Shareholders	Class of Shareholder	Existing Shareholding/ Pre capital reduction		Post Capital Reduction	
		Number of Shares	% Holding	Number of Shares	% Holding
Vineet Chandra Rai	Promoter Group	5,08,290	21.09%	5,08,290	39.33%
Swati Vineet Rai	Promoter Group	3,92,637	16.29%	3,92,637	30.38%
P. Pradeep	Other shareholder	57,000	2.36%	57,000	4.41%
E. N. Venkat	Other shareholder	8,696	0.36%	8,696	0.67%
Ajay Maniar	Other shareholder	6,656	0.28%	6,656	0.52%
Sanchayan Chakraborty	Other shareholder	8,697	0.36%	8,697	0.67%
Sushma Kaushik	Other shareholder	2,082	0.09%	2,082	0.16%
Anurag Agrawal	Other shareholder	42,866	1.78%	42,866	3.32%
Systrama Consultants Pvt Ltd	Other shareholder	13,600	0.56%	13,600	1.05%
Manoj Nambiar	Other shareholder	40,737	1.69%	40,737	3.15%
Atreya Rayaprolu	Other shareholder	26,964	1.12%	26,964	2.09%
Vikas Bali	Other shareholder	4,348	0.18%	4,348	0.34%

Name of Shareholders	Class of Shareholder	Existing Shareholding/ Pre capital reduction		Post Capital Reduction	
		Number of Shares	% Holding	Number of Shares	% Holding
Shyamkant Joshi	Other shareholder	3,086	0.13%	3,086	0.24%
Shashvat Rai	Other shareholder	894	0.04%	894	0.07%
Subit Saurav	Other shareholder	674	0.03%	674	0.05%
Neha Saraf	Other shareholder	737	0.03%	737	0.06%
Disha Gandhi	Other shareholder	800	0.03%	800	0.06%
Himanchal Rai	Other shareholder	290	0.01%	290	0.02%
Stefanie Bauer	Other shareholder	2,899	0.12%	2,899	0.22%
Gagandeep Bakshi	Other shareholder	2,899	0.12%	2,899	0.22%
Nisha Dutt	Other shareholder	34,384	1.43%	34,384	2.66%
Aditi Shrivastava	Other shareholder	2,581	0.11%	2,581	0.20%
Amol Ganu	Other shareholder	157	0.01%	157	0.01%
Ekta Shah	Other shareholder	157	0.01%	157	0.01%
Divya Gupta	Other shareholder	126	0.01%	126	0.01%

Name of Shareholders	Class of Shareholder	Existing Shareholding/ Pre capital reduction		Post Capital Reduction	
		Number of Shares	% Holding	Number of Shares	% Holding
Janavi Papriwal	Other shareholder	63	0.00%	63	0.00%
Darren Lobo	Other shareholder	63	0.00%	63	0.00%
Abhishek Mittal	Other shareholder	471	0.02%	471	0.04%
Milind Nare	Other shareholder	101	0.00%	101	0.01%
Tarun Mehta	Other shareholder	9,078	0.38%	9,078	0.70%
Kiran Agrawal Todi	Other shareholder	1,008	0.04%	1,008	0.08%
Ashish Patel	Other shareholder	10,086	0.42%	10,086	0.78%
Shell Foundation	Investor other than Identified Investor	10	0.00%	10	0.00%
Triodos Sicav-II – (acting on behalf of and for the benefit of its sub-fund Triodos Microfinance Fund)	Identified Investor	1,88,255	7.81%	0	0.00%

Name of Shareholders	Class of Shareholder	Existing Shareholding/ Pre capital reduction		Post Capital Reduction	
		Number of Shares	% Holding	Number of Shares	% Holding
Legal Owner Triodos Funds B.V. (in its capacity as legal owner of Triodos Fair Share Fund)	Identified Investor	1,88,256	7.81%	0	0.00%
Teachers Insurance and Annuity Association of America	Identified Investor	4,77,768	19.82%	0	0.00%
Nederlandse Financierings-Maatschappij Voor Ontwikkelingslanden N.V.	Identified Investor	2,63,905	10.95%	0	0.00%
Rajesh Sachdeva	Investor other than Identified Investor	27,614	1.15%	27,614	2.14%
Aavishkaar Group Employees' Benefit Trust	Other shareholder	81,496	3.38%	81,496	6.31%

Name of Shareholders	Class of Shareholder	Existing Shareholding/ Pre capital reduction		Post Capital Reduction	
		Number of Shares	% Holding	Number of Shares	% Holding
Total		24,10,431	100	12,92,647	100

6. The Regional Director (Western Region), Ministry of Corporate Affairs, Mumbai, has filed a Report dated 25 November 2023 inter-alia making the following observations which are produced hereunder:

“6. ROC, Mumbai in his Report No. ROC/STA/906 dated 30.10.2023 inter-alia mentioned in the report that there is no complaint received against the company. Further at para 23 of his report inter alia mentioned that, Interest of creditors and minor shareholders/stakeholders should be protected.

7 The observations of the Regional Director on the proposed Scheme of Reduction of Capital are as under:-

A) Provisions of section 52 of the Companies Act, 2013 is reproduced as below-

Application of premiums received on issue of shares. -

(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 debentures 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.*

In view of the provisions of section 52 of the companies Act, 2013 the petitioner shall satisfy the Hon'ble NCLT that the reduction of share capital application is also fulfilling the requirements of Section 52 of the Companies Act, 2013."

B) *The Present petition proposes the reduction of equity shares of Rs 10/- each and distribution of investment by petitioner company held by 4 identified shareholders and payment by way of giving to investment i.e. equity shares of value of Rs. 3,72,69,23,277/- by mode other than cash (i.e. by distributing 1,75,04,095 (One Crore Seventy Five Lakhs Four Thousand Ninety Five) equity shares of Arohan Financial Services Limited and 1,35,66,688 (One crore Thirty Five Lakh Sixty Six Thousand Six Hundred and Eighty Eight) equity shares of Ashv Finance Limited held by the company and cancellation and extinguishment of 11,18,184 equity shares and share premium of Rs. 3,71,57,41,437/-. The effect adjustment of reduction of capital is as under –*

<i>Particulars</i>	<i>Amount (Rs.)</i>	<i>Amount (in Lakhs)</i>
<i>Reduction in Equity Share Capital by</i>	<i>1,11,81,840</i>	<i>-</i>
<i>Reduction in Security Premium by</i>	<i>3,71,57,41,437</i>	<i>-</i>
<i>Reduction in Investment in 1,75,04,095 Arohan Financial Services Limited (valuation @85 per share on 03.04.2023 as per the valuation report)</i>	<i>-</i>	<i>Book value vs Valuation of shares distributed to be clarified by petitioner</i>
<i>Reduction in Investment in 1,35,66,688 shares of Ashv Finance Limited</i>	<i>-</i>	<i>Book value vs Valuation of shares distributed to be clarified by petitioner</i>
<i>Total</i>	<i>3,72,69,23,277/-</i>	<i>3,72,69,23,277/-</i>

As per the provisions of Companies Act, 2013, the company has following options with the permission of Hon'ble NCLT:-

- (i) Extinguish or reduce the liability of any of its shares in respect of the share capital not paid up, or*
- (ii) Cancel any paid-up share capital which is lost or is unrepresented by available assets; or*
- (iii) Pay off any paid-up share capital which is in excess of the wants of the company.*

Therefore, the subject matter of reduction in form of distribution of assets lying in form of investment in equity shares of two companies to 4 identified shareholders of the petitioner company is outside the scope of section 66 of the Companies Act, 2013 as company instead of paying off excess share capital / shareholder's fund from it's needs distributing it's assets (equity investment in 2 companies) in garb of reduction of capital which is not permitted as per the spirit of the provisions of section 66 of Companies Act, 2013 and it may leads to tax avoidance by the petitioner company and / or shareholder.

Thus, Hon'ble NCLT may satisfy itself about the bonafide proposal of the said scheme under Section 66 of the Companies Act, 2013 before passing such order in the matter on intent of section 66 of the Companies Act, 2013 which is not mandating to distribute the assets of the company to the shareholders.

The Hon'ble NCLT is humbly requested to interpret the application and intention and legislature in respect of section 66 of Companies

Act, 2013, by disregarding the few cases earlier considered by NCLT Mumbai Bench.

- C) *Since distribution of Assets in forms of the equity shares of the company to the four identified shareholders instead of giving cash after realization of value of shares as it is a taxable event in the hands of the company on account of capital gain tax as well as shareholders on account of deemed dividend to the extent distributed out of profit and remaining amount as capital gain. Therefore, the interest of Government Revenue i.e. income tax liability on account such a reduction needs to be protected. The said capital reduction is complex in nature in respect of the calculation of the tax liability in the hands of the company and in the hands of the shareholders.*

The company vide letter dated 24.11.2023 (copy enclosed) has acknowledged that if company is distributing assets to 4 shareholders for cancellation /reduction of 11,18,184 equity shares of the company, it will be a taxable event for company as well as to the recipients ' shareholders and approximately, tax liability could be INR 32.11 (2.11+4+26) Million and the company has undertaken that tax liability will be deposited to tax authority.

Since Petitioner Company is an unlisted company and tax liability depends upon the valuation of shares as per the Income Tax norms and the scheme of reduction of capital is designed mainly to take the benefit of the income tax and there is absence of any commercial aspect for such type of the scheme which is also not following ambit of section 66 of CA, 2013, therefore to protect the interest of the

income tax department in such complex nature of reduction of capital & distribution of assets, NOC/ Comments of Chief principal commissioner income tax department, Mumbai as nominated by nominated by CBDT as nodal officer in such matter as it falls under the domain of Income Tax Department.

D) 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 on account of dividend distribution tax or Capital Gain Tax, as the case may be in the hands of the recipient's shareholders.

Therefore, the tax implication if any arising out of the proposal for reduction is subject to final decision of Income Tax Authorities as transfer of investments in companies in the hands of shareholder will attract Income Tax in the hands of recipient shareholders/petitioner company on account of accumulated profits/value appreciation of assets invested in the Company. The approval of the Company Petition by this Hon'ble Court may not deter the Income Tax Authority from scrutinizing 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.

- E) *The present petition proposes the reduction of 11,18,184 equity shares of Rs. 10/- each and distribution of investment by petitioner company held by Identified Investor and not to all equity shareholders. Hence, the selective reduction of capital is detrimental and unjust and unfair to the other shareholders/members holding equity share capital of the company.*
- F) *The petitioner company has a foreign entity as a shareholder whose shares are being reduced under the present company petition. Therefore the petitioner company shall undertake to comply with FEMA/RBI guidelines thereof.*
- G) *It is further submitted that as per para 11 of the scheme the company will obtain prior approval of RBI before giving effect of the scheme for reduction of share capital as distribution of investment as a consideration to shareholder will be subject to obtaining prior approval of RBI by applicant company being NBFC. Therefore, the Hon'ble NCLT may place the condition for obtaining the prior approval of RBI before implementing the scheme by the subject NBFC Petitioner Company.*
- H) *The petitioner company has mentioned in Para 4 of petition that it is engaged in the business of acting as a fund manager to alternative investment funds registered with the SEBI and advisory services to offshore venture capital funds and fund managers. In this regard it is submitted that whether approval of SEBI/Stock Exchange is required or not, and if required then the company shall obtain before approval of the petition.*

7. In response to the Report of the Regional Director the Petitioner Company has filed affidavit in rejoinder on 13 December 2023 reproduced hereunder:

4. The response of the Petitioner Company to each of the aforesaid observations of the Regional Director made in the Report are as under:

4.1. In so far as the observation made in Paragraph 6 of the Report is concerned, the Petitioner Company submits as under:

(a) In relation to the protection of interest of the creditors of the Petitioner Company, the Petitioner Company submits that neither will the Capital Reduction affect the interest of the creditors or the minority shareholders/stakeholders of the Petitioner Company, nor will the Capital Reduction be detrimental to their interest. All creditors are being paid off in the ordinary course of business.

4.2. In so far as the observation made in Paragraph 7 (A) of the said Report is concerned the Petitioner Company submits as under:

(a) It is a settled position in law that the proposed utilization of Securities Premium Account amounts to reduction of capital of the Petitioner Company by virtue of the provisions of Sections 52 and 66 of the Companies Act, 2013 (“the Companies Act”).

(b) Section 52 of the Companies Act expressly provides that provisions of the Companies Act relating to the reduction of share capital of a Company shall, except as provided in Section 52 of the Companies Act, apply

even for adjustment of Securities Premium Account as if it were the paid up share capital of the Company.

(c) As per Section 52(1) of the Companies Act, 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 the Companies 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. Accordingly, the reference to Section 52 of the Companies Act along with Section 66 of the Companies Act is made in relation to the utilization of such amounts in the Securities Premium Account.

(d) Accordingly, if the Securities Premium Account is applied / utilized for any of the purpose(s) other than those mentioned in sub-section 2 of Section 52 of the Companies Act, then such utilization would be treated as reduction of share capital in accordance with the provisions of the Companies Act. The Petitioner, in such a case, is required to follow the provisions of Section 66 of the Companies Act.

(e) The Petitioner Company submits that it is empowered by virtue of Article 14.4 of its articles of association to undertake the reduction of its share premium account. Article 14.4 is reproduced below

“The Company may, by special resolution, reduce in any manner and with, and subject to, any incident authorised and consent required by law, -

(a) its share capital;

(b) any capital redemption reserve account; or

(c) any share premium account.”

(f) In light of the above, the Petitioner Company submits that the provisions of Section 52 of the Companies Act (as applicable) are being satisfied pursuant to the Capital Reduction under the Capital Reduction Petition.

(g) In support of the above contention, the Petitioner Company relies upon the judicial decision of Hon’ble National Company Law Appellate Tribunal, Principal Bench (‘NCLAT’) in Company Appeal (AT) No. 293 of 2019 in the matter of Brillio Technologies Private Limited dated 19.04.2021 wherein the Hon’ble NCLAT held that the Securities Premium Account can be utilized for making payment to shareholders. Copy of the order is hereto annexed and attached as Annexure A.

(h) The Petitioner Company also relies upon the ruling of NCLT, Mumbai Bench in case of Amber Internet Solutions Private Limited in Comp.Appl/261 (MB)2022 in CP/414 (MB) 2021 wherein a scheme of capital reduction was approved by the NCLT involving utilisation of securities premium for making payment to the shareholders. Copy of the order is hereto annexed and attached as Annexure B.

4.3. In so far as the observation made in Paragraph 7 (B) of the Report is concerned the Petitioner Company submits as below-

(a) The effect / adjustment of reduction of capital is as under:-

Particulars	Amount (Rs.)	Amount (in Lakhs)
Reduction in Equity Share Capital by	1,11,81,840	
Reduction in Security Premium by	371,57,41,437	
Reduction in Investment in Arohan Financial Services Limited (valuation @ 85 per share as on 03.04.2023 as per the valuation report)		21,668.32 (Computed basis sale price of 123.785 per share which is higher than fair market value of INR 85 in compliance with pricing guidelines under the and Foreign Exchange Management (Non-Debt Instruments) Rules, 2019)

Reduction in Investment in 1,35,66,688 shares of Ashv Finance Limited (valuation @ 87.18 per share as on 16.05.2023 as per the valuation report)		15,601.69 (Computed basis sale price of 115 per share which is higher than fair market value of INR 87.18 in compliance with pricing guidelines under the Foreign Exchange Management (Non-Debt Instruments) Rules, 2019)
Total	372,69,23,277	372,69,23,277

(b) Section 66(1) of the Companies Act provides as under:

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)

(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 deposits accepted by it, either before or after the commencement of this Act, or the interest payable thereon.”

(c) The Counsel for the Petitioner Company submitted that the words “*in any manner*” used in Section 66(1) of the Companies Act. Plain reading of the sections allows reduction of share capital “*in any manner*” as intended by the Petitioner Company, if approved by a special resolution of the shareholders.

(d) Further the paid-up share capital of the company can be reduced and extinguished by paying-off the shareholders under Section 66(1)(b)(ii) of the Companies Act. The mode of such settlement of liability is not specified therein and hence, payment of consideration by a mode other than cash (i.e. in the form of distribution of assets of company) would be construed as paying-off the liability of the Company towards its paid-up share capital. The same is also supported by the ratio laid down by the Supreme Court of India in case of Rajendra Prasad Gupta versus Prakash Chandra Mishra & Ors. [Civil

Appeal No(s). 984 OF 2006 – Order dated 12th January 2011] wherein the Hon’ble Supreme Court has held as under:

“Courts are not to act upon the principle that every procedure is to be taken as prohibited unless it is expressly provided for by the Code, but on the converse principle that every procedure is to be understood as permissible till it is shown to be prohibited by the law. As a matter of general principle prohibition cannot be presumed.”

Copy of the order of Hon’ble Supreme Court is annexed to the Affidavit in rejoinder as **Annexure C**. The Petitioner Company has also made reliance on the following judicial precedents which have approved reduction of share capital for consideration other than cash (i.e. by distributing property owned by the company). The same are attached to the Affidavit in rejoinder.

- a. Shrem Infraventure Private Limited [CP No. 110 of 2022] – NCLT, Mumbai Bench, 03 March, 2023;
- b. Vodafone India Limited [CP No. 407 of 2017] – NCLT Mumbai Bench, 17 May, 2018
- c. Chawla Brothers Private Limited [CP No. 903 of 2020] – NCLT, Mumbai Bench, 30 April, 2021
- d. Shrem Roadways Private Limited [CP No. 109 of 2022] – NCLT, Mumbai Bench, 14 July, 2022
- e. Shrem Tollway Private Limited [CP No. 104 of 2022] – NCLT, Mumbai Bench, 21 July, 2022
- f. Shrem Infraventure Private Limited [CP No. 110 of 2022] – NCLT, Mumbai Bench, 03 March, 2023

- g. Aditya Birla Telecom Limited [Company Scheme Petition No. 836 of 2016] – High Court of Mumbai – December 14, 2016
- h. Farm Enterprises Limited (Company Petition No. 90 of 2016 connected with Company Summons for Direction No. 123 of 2016) – High Court of Bombay
- i. Commissioner of Gift-tax vs Cawasji Jehangir Co. (P.) Ltd. [1977] 106 ITR 390 (Bombay) High Court of Bombay
- j. Bata Properties Limited (Company Application No. 300 of 1995), the Hon'ble Calcutta High Court
- k. Commissioner of Income tax-I vs India Co. (P.) Ltd. [Tax Case No. 1010 of 1979] – High Court of Madras
- l. Shantha Rangarajan vs Commissioner of Income Tax [Tax case nos. 246,247,288 to 299 and 464 of 1981] – High Court of Madras
- m. Commissioner of Income Tax, Madras Vs G. Narasimhan 235 ITR 327 On 14th December, 1998 – Supreme Court
- n. The Commissioner of Income tax vs P. P. Thomas [(1999) 235 ITR 797 (Ker): High Court of Kerala – 13th November 1997

(e) In so far as the observation made in Paragraph 7 (C) & 7 (D) of the said Report is concerned, the Petitioner Company submits that the Petitioner Company has already provided a computation of approximate tax liability which it would discharge pursuant to proposed Capital Reduction by way of letter dated November 24, 2023. Further, the Petitioner Company hereby submits that the tax implications, if any arising from the proposed

Capital Reduction is subject to the final decision of the Income Tax authorities as per the applicable law. The approval of the Capital Reduction Petition by this Tribunal may not deter the Income Tax Authority to scrutinize the tax return filed by the Petitioner Company after giving effect to the proposed reduction and all issues arising out of scheme for reduction will be decided in accordance with law. Further, the Petitioner Company confirms that the Petitioner Company shall make payment to the shareholders of the Petitioner Company in respect of reduction of its share capital, only after withholding or deducting such tax at source as may be applicable as per Income tax Act, 1961 as per applicable law.

In so far as the observation made in Paragraph 7 (E) of the said Report is concerned the Petitioner Company submits as under:

(a) Selective reduction of share capital is no more res integra and has been considered in numerous decisions of this Tribunal and by judicial authorities. The Delhi High Court in Reckitt Banckiser (India Ltd) reported in 2005122DLT612 in its order categorically held that it is a settled law that the question of reduction of share capital is treated as a matter of domestic concern and the decision of majority will prevail. *Reliance is also placed order of this bench in **Chawla Brothers Private Limited [CP No. 903 of 2020] – NCLT, Mumbai Bench, 30 April, 2021***

4.5. In so far as the observation made in Paragraph 7 (F) of the Report is concerned, the Petitioner Company submits that as mentioned in paragraph 16 of the Capital

Reduction Petition, the proposed Capital Reduction is compliant with the Foreign Exchange Management Act, 1999 including the rules thereunder. In any event, the Petitioner Company has, on its own volition, stated in para no 18 of the Capital Reduction Petition that the approval of the Reserve Bank of India (Foreign Exchange Department) will be required to be obtained prior to giving effect to the Capital Reduction. Accordingly, the Petitioner Company filed its application dated September 28, 2023 with the Reserve Bank of India (Foreign Exchange Department) wherein it sought specific approval from Reserve Bank of India (“RBI”) in respect of the proposed Capital Reduction. A copy of the Petitioner Company’s application to the RBI dated September 28, 2023 is annexed to this Affidavit as Annexure S. In response to the aforesaid application, the RBI, through its letter dated November 7, 2023, has advised the Petitioner Company that it “may approach the RBI through the AD bank once the proposed restructuring is approved by the NCLT”. A copy of RBI’s letter dated November 7, 2023 is annexed to this Affidavit as Annexure -T. It is submitted that the Petitioner Company undertakes to comply with the requirements under the Foreign Exchange Management Act, 1999 / RBI guidelines, as applicable, including approaching the RBI through the authorized dealer (AD bank) and making the requisite Form FC-TRS filings within the prescribed time period.

4.6. In so far as the observation made in Paragraph 7 (G) of the Report is concerned, the Petitioner Company submits as under:

(a) The Petitioner Company is not an NBFC and hence is not regulated by the Reserve Bank of India (“RBI”). In any event, pursuant to the direction of this Hon’ble Tribunal in its order dated August 9, 2023, a notice dated September 6, 2023 in Form RSC - 2 was sent by the Petitioner Company to the RBI. A copy of the notice in Form RSC-2 and proof of delivery thereof is annexed to this Affidavit as Annexure U. In response to the aforesaid notice, the RBI has sent a letter dated November 7, 2023 in which it has not raised any objections to the Capital Reduction.

(b) With respect to the RD’s observations in the context of para 11 (synopsis) of the Capital Reduction Petition, it is submitted that the aforesaid para 11 refers to the NBFC – Systemically Important Non-Deposit Taking Company (Reserve Bank) Directions, 2016, as amended (“NBFC Directions”). The NBFC Directions do not apply to the Petitioner Company as it is not an NBFC. However, since Ashv and Arohan are NBFCs, the NBFC Directions apply to them. The Petitioner Company submits that the NBFC regulation Directions require NBFCs such as Ashv and Arohan to seek prior RBI approval if there is a change in their respective shareholding of 26% or more since the date of their last RBI approval and not otherwise. Accordingly, the Petitioner Company submits that in para 11 (synopsis) of the Capital Reduction Petition, the Petitioner Company had stated that such prior RBI approval under the NBFC Directions will be obtained “if required” prior to giving effect to the Capital Reduction and distribution of shares

in Ashv and Arohan to the Identified Investors. The Petitioner Company declares that the requirement to obtain prior RBI approval under the NBFC Directions will be complied with if at the time of implementation of the Capital Reduction post sanction by this Hon'ble Tribunal, the distribution of shares of Ashv or Arohan to the Identified Investors results in the change in shareholding of Arohan or Ashv of 26% or more as per the NBFC Directions.

4.7. In addition to the above, in so far as the observation made in Paragraph 7 (H) of the Report is concerned, the Petitioner Company declares that the Petitioner Company is not registered with the Securities and Exchange Board of India ("SEBI") but it is certain of the alternative investment funds (AIFs) managed by the Petitioner Company that are registered with SEBI. Hence, no approval under the applicable law is required to be taken by the Petitioner Company from SEBI/Stock Exchanges.

8. Heard the Learned Counsel for the Petitioner Company. The explanations in relation to buy-back of shares by mode other than cash from selected shareholders is found legally acceptable and is based on consistently laid judicial preposition in this regard. In so far as interest of the income tax department is concerned, the Petitioner is only the undertaking to pay appropriate tax as applicable on transfer of property in exchange of buyback and further tax on buy back of the shares. Nonetheless the Income Tax Department shall be at liberty to enforce the collection of tax on these accounts, in case the same is not paid by the Petitioner

company in accordance with law. We also clarify that the income tax department shall be at liberty to examine the incidents of tax in the hands of selective shareholders whose shares are subject matter of buy back.

9. In view of above, we are of the considered view that the proposed scheme of reduction is in accordance with the section 66 of the Companies Act, 2013 and meets the requirements laid down thereunder. Accordingly, the Company Petition is allowed.
10. The Petitioner Company to publish notices about registration of order and minutes by the concerned Registrar of Companies, Mumbai, Maharashtra 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.
11. The Petitioner Company to comply with the relevant RBI / FEMA regulations.
12. 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 from the date of receipt of the certified Order from the Registry of this Tribunal.
13. All concerned regulatory authorities to act on production of certified copy of the order to be issued on demand by the Designated Registrar of this Tribunal.
14. The minutes set forth hereto be and is hereby approved.

Form of Minutes

“The issued and paid-up share capital of Aavishkaar Venture Management Services Private Limited is henceforth Rs. 1,29,22,470 divided into 12,92,247 equity shares of Rs. 10/- each. Reduced from Rs. 2,41,04,310/- divided into 24,10,431 equity shares of Rs. 10 each. At the date of registration of this minute, 12,92,247 equity shares have been issued and fully paid up.

The Securities Premium Account of Aavishkaar Venture Management Services Private Limited, is henceforth reduced by Rs. 3,71,57,41,437/- (Indian Rupees Three Hundred Seventy One Crore Fifty Seven Lakh Forty One Thousand Four Hundred Thirty Seven only, as reduced from Rs. 5,85,50,29,794/- (Rupees Five hundred Eighty Five crores Fifty Lakhs Twenty Nine Thousand Seven Hundred Ninety Four only)”

Sd/-

Prabhat Kumar
Member (Technical)

Sd/-

Justice V.G. Bisht
Member (Judicial)