

THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH - I

CP.234/MB/2022

In the Matter of:
The Section 66 read with section 52 of
The Companies Act, 2013
including Any Statutory Modification or Re-
enactments thereof for the time being in force and
including any rules thereunder

AND

In the Matter of:
Reduction of Equity Share Capital of
Farmlink Agri Distribution and Market Linkage
Private Limited

**Farmlink Agri Distribution and Market
Linkage Private Limited**

CIN: U21098MH1962PLC012488

.... Petitioner Company

Order delivered on 25.04.2024

Coram:

Shri Prabhat Kumar

Hon'ble Member (Technical)

Justice V.G. Bisht (Retd.)

Hon'ble Member (Judicial)

Appearances (through)

For the Petitioner(s)

: Mr. Ajit Singh Tawar, Advocate

For the Regional Director :

Mr. Tushar Wagh, Deputy Director

ORDER

1. Heard learned Counsel for the Petitioner Company. No objector has come before the Tribunal to oppose the Petition, nor any party has controverted any averments made in the Petition unless otherwise stated hereunder.

2. The Shareholders vide special resolution in the Annual General Meeting held on 30th June, 2022 unanimously approved the reduction of the subscribed and paid – up equity share capital of the Company from INR 35,55,640/- (Rupees Thirty Five Lakhs Fifty Five Thousand Six Hundred and Forty only) comprising of 3,55,564 (Three lakh Fifty Five Thousand Five Hundred and Sixty Four) equity shares of INR. 10/- each to INR 1,28,740/- (Rupees One Lakh Twenty Eight Thousand Seven Hundred and Forty only) divided into 12,874 (Twelve Thousand Eight Hundred and Seventy Four) shares of INR 10/- each fully paid up by cancelling and extinguishing the issued, subscribed and paid-up share capital of INR 34,26,900/- (Rupees Thirty Four lakh Twenty Six Thousand Nine Hundred only) divided into 3,42,690 (Three Lakh Forty Two Thousand Six Hundred and Ninety) shares of INR 10/- each and by returning to the shareholders an amount of INR 335.59 (Rupees Three hundred and Thirty Five and Fifty Nine Paise Only) per equity share of INR 10 (Rupees Ten) so cancelled and extinguished at a premium of INR 325.59 (Rupees Three hundred and Twenty Five and Fifty Nine Paise Only) per equity share. Pursuant to the said reduction of shares, the corresponding shareholders of the Petitioner Company shall be paid INR 335.59 (Rupees Three hundred and Twenty-Five and Fifty-Nine Paise Only) per equity share, INR 34,26,900/- (Rupees Thirty Four lakh Twenty Six Thousand Nine Hundred only) shall be from the paid-up share capital of the Company and INR 11,15,76,437/- (Eleven Crore Fifteen lakh Seventy Six Thousand Four Hundred and Thirty Seven Only) shall be reduced from the Securities Premium account of the Company.

3. This Petition is for confirmation of a special resolution passed by the Petitioner Company for reduction of the subscribed and paid – up equity share capital of the Company from INR 35,55,640/- (Rupees Thirty Five Lakhs Fifty Five Thousand Six Hundred and Forty only) comprising of 3,55,564 (Three lakh Fifty Five Thousand Five Hundred and Sixty Four) equity shares of INR. 10/- each to INR 1,28,740/- (Rupees One Lakh Twenty Eight Thousand Seven Hundred and Forty only) divided into 12,874 (Twelve Thousand Eight Hundred and Seventy Four) shares of INR 10/- each fully paid up by cancelling and extinguishing the issued, subscribed and paid-up share capital of INR 34,26,900/- (Rupees Thirty Four lakh Twenty Six Thousand Nine Hundred only) divided into 3,42,690 (Three Lakh Forty Two Thousand Six Hundred and Ninety) shares of INR 10/- each and by returning to the shareholders an amount of INR 335.59 (Rupees Three hundred and Thirty Five and Fifty Nine Paise Only) per equity share of INR 10 (Rupees Ten) so cancelled and extinguished at a premium of INR 325.59 (Rupees Three hundred and Twenty Five and Fifty Nine Paise Only) per equity share.
4. The said special resolution was approved unanimously by the shareholders of the Petitioner Company in the Extra-ordinary General Meeting held on 30th June, 2022. The Special Resolution shall be effected in the following manner:

	Paid up Capital	No. of Shares	Amount per share
Existing	35,55,640/-	3,55,564	Rs. 10/-
To be Cancelled	34,26,900/-	3,42,690	Rs. 10/-
Remaining	1,28,740/-	12,874	Rs. 10/-
Amount to be paid to shareholders	Rs. 11,50,03,337/- i.e., towards 3,42,690 equity shares at INR 335.59 /- per share as per Valuation Report dated 26.07.22 issued by registered valuer, Mr. Avneep L Mehta.		

5. The Article 29 of the Articles of Association of the Petitioner Company empowers the Petitioner Company to reduce its share

capital in any manner for the time being authorized by law by passing a Special Resolution. The relevant extract of the said article is as under:

“29. *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.”

6. That pursuant to the reduction, the corresponding shareholders of the Petitioner Company shall be paid INR 335.59 (Rupees Three hundred and Twenty-Five and Fifty-Nine Paise Only) per equity share, INR 34,26,900/- (Rupees Thirty Four lakh Twenty Six Thousand Nine Hundred only) shall be from the paid-up share capital of the Company and INR 11,15,76,437/- (Eleven Crore Fifteen lakh Seventy Six Thousand Four Hundred and Thirty Seven Only) shall be reduced from the Securities Premium account of the Company. The valuation report dated 26th July 2022 issued by registered valuer, Mr. Avneep L Mehta in compliance to Rule 21 of the Foreign Exchange Management (Non-Debt Instruments) Rules, 2019, had arrived at a per share valuation of INR 335.59 (Rupees Three hundred and Thirty-Five and Fifty-Nine Paise Only).
7. The Petitioner Company has complied with all the statutory requirements as the directions of the Tribunal vide order dated 15.09.2023 and they have filed the necessary Affidavit of Service with the Tribunal on 26-09-2023 and 23-11-2023. Moreover, the Petitioner Company also undertakes to comply with statutory requirements, if any, under the Companies Act, 2013 and the Rules made thereunder, as may be applicable.

8. The Regional Director has filed his Report dated 13.12.2013 making certain observations and the Petitioner Companies through its reply dated 20.12.2023 have undertaken/made following submission that :
- a. Post approval of the reduction by the NCLT the Company will decide on the Record Date to make the reduction effective by paying off the shareholders and also file necessary Forms with the ROC to make the Reduction effective;
 - b. The reduction of share capital of a company shall, except as provided in Section 52(2) of the Companies Act, 2013 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, 2013, 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;
 - d. The Petitioner company accepts that, the Tax implication if any arising out of the proposal for reduction is subject to final decision of Income Tax Authorities as per the applicable law;
 - e. The approval of the Company Petition by this Hon'ble Court shall not deter the Income Tax Authority to scrutinize the tax return filed by the Company or its shareholders after giving effect to the proposed reduction;
 - f. The proposed capital reduction is covered under automatic route as prescribed under FEMA regulations and accordingly approval of RBI will not be required;
 - g. The reduction of Equity Share Capital of the Company Under Section 66 read with section 52 of the Companies Act, 2013

follows the Act and the interest of the creditors and Income Tax Department shall be protected.

9. Mr. Tushar Wagh, Deputy Director, Office of Regional Director (WR), Mumbai appeared on the date of hearing and submits that the explanations and clarifications given by the Petitioner Companies in rejoinder are satisfactory and they have no further objection to the Scheme.
10. The Principal Commissioner of Income Tax 6, Mumbai has filed its report dated 1st February 2024 stating that the present Petition for the Reduction of Share capital and Securities premium account under the provisions of the Companies Act, 2013 should be considered as the petition for buy back/purchase of its own shares by the Petitioner Company under Section 68 read with Section 52 of the Companies Act and therefore, the Petitioner Company is liable for tax u/s. 115QA of the Income Tax Act, 1961. That Finance Bill, 2016 (Memorandum) clarifies that the provisions of section 115QA shall apply to any buy back undertaken by the company in accordance with the provisions of law relating to the Companies and not necessarily restricted to Sec. 77 A of the Companies Act 1956. Accordingly, the Petitioner Company is liable to pay tax as per provisions of Section 115QA of the Income Tax Act, 1961. Further the proposed reduction of share capital may result into violation of the Section 97 of the Income Tax Act, 1961.
11. In response to the report of the Principal Commissioner of Income Tax 6, Mumbai, the Petitioner Company has filed an Affidavit in Reply dated 21st February 2024 stating that the present Petition is presented under Section 66 read with Section 52 of the Companies Act, 2013 before the Tribunal constituted as Company Court under the provisions of the Companies Act 2013 and not under 115QA of the Income Tax Act, 1961. Therefore, the Tribunal has to deal with

the same as per the provisions of the Companies Act and not as per the Income Tax Act. Further, the Petitioner Company in view to safe guard the interest of the Income Tax Department has provided the undertakings as required under paragraphs 13 to 16 of the Report of the Principal Commissioner of Income Tax 6, Mumbai in paragraph (d) of the said Affidavit in Reply. The said undertakings are reproduced herein below for reference:

- i. That sanction of the present Petition by this Tribunal will not deter the Income Tax Authorities to question the Scheme being buyback and the same is left open to be considered and decided by the Income Tax Department with liberty to Petitioner Company to make necessary submission as per the Law to that effect.
- ii. That in the event of default in payment of legitimate tax dues under the Income Tax Act arising after the sanction of the present Petition by this Tribunal, its shareholders shall be liable to make good the default to the extent of funds taken out of the company by this scheme of reduction and paid to the shareholders in the present Petition.

12. The submissions given by the Petition Company in response to the report of Principal Commissioner of Income Tax have taken on record.

13. From the material on record, the Petition appears to be fair and reasonable and is not violative of any provisions of law and is not contrary to public policy. Since all the requisite statutory compliances have been fulfilled and is made absolute in terms of the prayer clauses thereof. The Petition is hereby allowed.

14. The Petitioner Company undertakes to file the certified copy of the order and form of minutes duly certified by the Deputy Registrar /

Assistant 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.

15. 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.
16. The Petitioner company shall file appropriate application with the Registrar of Companies for deletion of words “assets reconstruction” in view of it ceasing to pursue this business and alter its name clause in accordance with the proposed objects of the company after reduction of share capital.
17. All concerned regulatory authorities to act on production of certified copy of the order duly signed by designated Registrar of this Tribunal.
18. The minutes set forth hereto be and is hereby approved.

Form of Minutes

“Reduction of the subscribed and paid – up equity share capital of the Company from INR 35,55,640/- (Rupees Thirty Five Lakhs Fifty Five Thousand Six Hundred and Forty only) comprising of 3,55,564 (Three lakh Fifty Five Thousand Five Hundred and Sixty Four) equity shares of INR. 10/- each to INR 1,28,740/- (Rupees One Lakh Twenty Eight Thousand Seven Hundred and Forty only) divided into 12,874 (Twelve Thousand Eight Hundred and Seventy Four) shares of INR 10/- each fully paid up by cancelling and extinguishing the issued, subscribed and paid-up share capital of INR 34,26,900/- (Rupees Thirty Four lakh Twenty Six Thousand Nine Hundred only) divided into 3,42,690 (Three Lakh Forty Two Thousand Six

Hundred and Ninety) shares of INR 10/- each and by returning to the shareholders an amount of INR 335.59 (Rupees Three hundred and Thirty Five and Fifty Nine Paise Only) per equity share of INR 10 (Rupees Ten) so cancelled and extinguished at a premium of INR 325.59 (Rupees Three hundred and Twenty Five and Fifty Nine Paise Only) per equity share.”

Sd/-

Prabhat Kumar
Member (Technical)

Sd/-

Justice V.G. Bisht
Member (Judicial)