

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH C-IV**

C.P. 226/MB/2023

In the matter of

*Under Section 66 read with Section 52
and other applicable provisions of the
Companies Act, 2013 and the Rules
framed thereunder;*

AND

In the matter of

*Reduction of Equity Share Capital of
**HCY Industrial Parks Private
Limited** (“The Petitioner Company”)*

HCY Industrial Parks Private
Limited
[CIN: U70102MH2013PTC322984]

..... Petitioner Company

Order Pronounced on : **29.04.2024**

Coram:

Smt. Anu Jagmohan Singh
Hon'ble Member (Technical)

Shri Kishore Vemulapalli
Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Petitioner Company:

C.A. Harsh C. Ruparelia, i/b A R C H
and Associates, Chartered
Accountants through physical mode.

For the Regional Director:

Mr. Tushar Wagh, Deputy Regional
Director, present though virtual
mode.

ORDER

1. Heard Ld. Representative for the Petitioner Company and the representative from the Regional Director (Western Region). No objector has come before the Tribunal to oppose the Petition nor any party has raised any objection to 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 21st day of August 2023, approving the reduction of the issued, subscribed and paid up equity share capital of the Petitioner Company, by way of cancelling and extinguishing 15,53,647 (Fifteen Lacs Fifty Three Thousand Six Hundred Forty Seven) equity shares of INR 10 (Indian Rupees Ten Only) each held by M/s. ILP Core Ventures III Pte. Ltd., the parent company, by payment of consideration of INR 44 (Indian Rupees Forty Four) per equity share, leading to a reduction in the issued, subscribed and paid-up equity share capital of the Petitioner Company from INR 43,21,26,800 (Indian Rupees Forty Three Crore Twenty One Lakh Twenty Six Thousand Eight Hundred) divided into 4,32,12,680 (Four Crore Thirty Two Lakh Twelve Thousand Six Hundred and Eighty) equity shares of INR 10 (Indian Rupees Ten Only) each to INR 41,65,90,330 (Indian Rupees Forty One Crores Sixty Five Lacs Ninety Thousand Three Hundred Thirty) divided into 4,16,59,033 (Four Crores Sixteen Lacs Fifty Nine Thousand Thirty Three) equity shares of INR 10 (Indian Rupees Ten

Only) 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 INR 5,28,23,998 (Indian Rupees Five Crores Twenty Eight Lacs Twenty Three Thousand Nine Hundred Ninety Eight) between the face value of equity shares cancelled of 1,55,36,470 (Indian Rupees One Crores Fifty Five Lacs Thirty Six Thousand Four Hundred Seventy) and consideration of INR 6,83,60,468 (Indian Rupees Six Crores Eighty Three Lakh Sixty Thousand Four Hundred and Sixty Eight) 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 Tribunal vide order dated 7th September, 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.
7. The Petitioner Company submits that the proposed reduction shall not cause any 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 15th August 2023,

as per directions of this Tribunal. The Petitioner Company has not received any representations from any of its creditors or any authorities except Regional Director, Western Region, as provided in the Affidavit filed dated 19th December, 2023.

8. The Regional Director (Western Region), Ministry of Corporate Affairs, Mumbai, has filed its Report dated 15th December, 2023 *inter-alia* making the following certain objections and the Petitioner Company has filed an Affidavit-in-Reply to the representations of the Regional Director, Western Region dated 19th December, 2023. The representations by the Regional Director (Western Region) and the responses of the Petitioner Company to the same are reproduced hereunder:

Para	Representations by the Regional Director	Response from the Petitioner Company
6	<i>ROC, Mumbai in his Report No. ROC/Sec 66/206/2022-23/927 dated 23.11.2023, 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, "1. "1. Interest of the Creditors and minor shareholders/ stakeholder should be protected.</i>	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

	<p>2. <i>Hon'ble NCLT, Mumbai Bench may be decided the matter on its merits.</i>"</p>	<p>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>
<p>7(A)</p>	<p><i>Provisions of section 52 of the Companies Act, 2013 is reproduced as below-</i> <i>"Application of premiums received on issue of shares.—</i> <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</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 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</p>

<p><i>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 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</i></p>	<p>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 and the provisions of the 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”. 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 Petitioner Company is utilizing the securities premium for items other than those mentioned in sub section 2 of section 52 of</p>
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<p><i>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 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,</i></p>	<p>the Companies Act, 2013, hence it is treated as a reduction of share capital of the Petitioner Company.</p>
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	2013.	
7(B)	<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>	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 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.
7(C) and (D)	<p>C) <i>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></p> <p>D) <i>Further, any amount paid to the shareholders above the face</i></p>	<p>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</p>

<p><i>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 44 per share are being paid on 15,53,647 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>the applicable tax implications arising out of the Company Petition which will be 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</p>
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		applicable law in this regard.
7 (E)	<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 the shareholders is ILP Core Ventures III Pte Ltd is foreign entity.</i>	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 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.
7 (F)	<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 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>	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 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

		<p>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 availability of reliefs and remedies to the Petitioner Company under the applicable provisions of the Companies Act, 2013.</p>
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		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.
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9. The Regional Director appeared through its representative Mr. Tushar Wagh and submitted that their observations/objections have been satisfactorily explained by the Petitioner Company. Hence, the Regional Director does not have any objection to the proposed scheme of reduction.
10. Since all the requisite statutory procedure has been fulfilled, the Company Petition is made absolute in terms of the prayer clause of the Petition.
11. From the material on record, the Scheme of reduction of share capital appears to be fair and reasonable and is not violative of any provisions of law and is not contrary to public interest/ policy.
12. 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. 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.

13. Petition for the reduction of share capital **allowed** subject to the directions given herein above. All concerned Regulatory Authorities to act on production of certified copy of this order to be issued on demand by the Deputy Registrar or Assistant Registrar, National Company Law Tribunal, Mumbai Bench.
14. The minutes set forth hereto be and is hereby approved.

FORM OF MINUTES

"The issued, subscribed and paid-up equity share capital of HCY Industrial Private Limited is henceforth INR 41,65,90,330 (Indian Rupees Forty One Crores Sixty Five Lacs Ninety Thousand Three Hundred Thirty) divided into 4,16,59,033 (Four Crores Sixteen Lacs Fifty Nine Thousand Thirty Three) equity shares of INR 10 (Indian Rupees Ten Only) each, reduced from INR 43,21,26,800 (Indian Rupees Forty Three Crore Twenty One Lakh Twenty Six Thousand Eight Hundred) divided into 4,32,12,680 (Four Crore Thirty Two Lakh Twelve

*Thousand Six Hundred and Eighty) equity shares of INR
10 (Indian Rupees Ten Only) each.”*

Sd/-

Anu Jagmohan Singh
Member (Technical)

Sd/-

Kishore Vemulapalli
Member (Judicial)