IN THE NATIONAL COMPANY LAW TRIBUNAL, SPECIAL BENCH – II, CHENNAI

CP/24(CHE)/2023

(filed under Section 66 of the Companies Act, 2013 r/w Section 52 of the Companies Act, 2013)

In the matter of **M/s. WESTERN ANDHRA TOLLWAYS PVT.**

M/s. Western Andhra Tollways Private Limited,
Represented by its Director
Mr. Paruchuri Sri Hari
[CIN: U45203TN2005PTC057931]
Registered Office at:
5th Floor, SKCL - Tech Square,
Lazer Street, South Phase,
SIDCO Industrial Estate,
Guindy, Chennai-600 032

..... *Petitioner*

Order Pronounced on ***13th September 2023***

CORAM:

SANJIV JAIN, MEMBER (JUDICIAL)
VENKATARAMAN SUBRAMANIAM, MEMBER (TECHNICAL)

Present:-

For Petitioner : Mr. R. Inbaraju, Advocate
For Regional Director : Mr. Avinash Krishnan Ravi, Advocate

ORDER

(Hearing conducted through VC)

Per: SANJIV JAIN, MEMBER (JUDICIAL)

This Petition under Section 66 read with Section 52 of the Companies Act, 2013 has been filed by **M/s. Western Andhra Tollways Private Limited**, a Company incorporated under the Companies Act, 1956 having its Registered Office at 5th Floor, SKCL - Tech Square, Lazer Street, South Phase, SIDCO Industrial

Estate, Guindy, Chennai-600 032 for reduction of Equity Share Capital of the Company.

2. The Petitioner Company is a Private Limited Company limited by shares. The main objects of the Company as set out in the Memorandum of Association are inter-alia, as under

1) *"To promote, develop, finance, establish, construct, build, install, equip, operate and maintain, administer, control, regulate, modify, rehabilitate, improve, augment and/or take over, upgrade all types of systems, methods or facilities for facilitating the travel and transportation or commuting of passengers, cargo or freight and to further these objectives amongst others, to construct, build, equip, upgrade and maintain roads, paths, approaches, avenues, arteries, boulevards, channels, drags, highways, passes, promenades, roadways, straits thoroughfares, trails, bridges, overpasses, trestles, via ducts, tunnels, passageways, conduits, pathways, culverts, shafts, subways, tubes, bypasses, freeways, highways, expressways and all types of surface transport Infrastructure and all other works, constructions*

and erections or buildings and things of any description whatsoever either upon lands acquired by the company or upon other lands and generally, to alter and improve the lands and other properties of the Company or otherwise and to finance and arrange for the financing of any such activities.

2) *To acquire by purchase, lease, exchange, hire or otherwise, immovable properties including lands, buildings, tenements and premises of any tenure or value, whether subject or not to any charges or encumbrances, and to hold and develop or to sell, let, alienate, mortgage, charge, license or otherwise deal with all or any of such lands, buildings, tenements or premises or other immovable property.*

3) *To participate in any capacity in any scheme or program sponsored or promoted by any Government or other authority or person, Indian or Foreign, for the purpose of, and / or for undertaking the construction, operation, regulation, improvement, rehabilitation, development of transport facilities of any kind, and to provide the requisite infrastructure therefore and to collect fees, tolls, charges and dues from the public or any Government or other authority for the use of any construction or erection or building established, constructed or built for managing or for providing the management of or for the maintenance of facilities or infrastructure put up or acquired by the Company as principal or as agent of, or on behalf of any Government or any other authority or any person whatsoever."*

3. The share capital of the Company as on 30.09.2022 is as under:

Particulars	No. of shares	Amount in Rs
Authorised share capital:		
Equity shares of Rs 10 each	6,00,00,000	60,00,00,000
Issued, subscribed and fully paid-up :		
Equity shares of Rs 10 each	5,65,00,000	56,50,00,000

4. It is stated that there is no change in the issued, subscribed and fully paid-up share capital of the Petitioner Company subsequent to 30.09.2022. Certified true copy of the audited financial statements as on 31.03.2022 and certified true copy of the unaudited financial statement as on 30.09.2022 have been filed as **Annexure-4.** It is stated that by virtue of Article 47 of the Articles of Association of the Petitioner Company, the Company,

from time to time, by Special Resolution, can reduce its share capital in any manner permitted by law.

5. It is stated that the Petitioner is a Special Purpose Vehicle incorporated for the purpose of widening 56 kilometers road covering Jadcherla to Kothakota under 'build, operate and transfer' scheme of Government of India. Summary of the assets and liabilities of the Petitioner Company as per the latest audited balance sheet for the financial year ended on 31.03.2022 is as below:

(All amounts are in Lakhs)

Liabilities	Rs. in lakhs	Assets	Rs. in lakhs
Equity Share Capital	5,650.00	Non- current Assets	7,801.25
Reserves & Surplus	284.22	Current Assets	8,146.20
Non-current Liabilities	8,735.07		
Current Liabilities	1,278.16		
Total	**15,947.45**	**Total**	**15,947.45**

6. It is stated that the Board of Directors of the Petitioner Company in the meeting held on 20.01.2023, passed a resolution approving the reduction of equity share capital annexed as **Annexure-5.** It is stated that the Board accorded the consent to reduce 2,23,76,709 (Two Crores Twenty Three Lakhs Seventy Six Thousand Seven Hundred and Nine only) equity shares of Rs.10/- each fully paid-up, out of the existing 5,65,00,000 (Five Crores

Sixty Five Lakhs only) equity shares of Rs.10/- (Rupees Ten only) each fully paid up stating that such reduction shall be effected by returning an aggregate amount of Rs.118,33,20,000/- (Rupees One Hundred Eighteen Crore Thirty Three Lakhs Twenty Thousand only) to the members. It was also resolved that the difference between the face value of the equity shares so cancelled and the amount to be paid to the members would be adjusted by debiting the Retained Earnings and Capital Reserve. Such equity shares of Rs.10/- each so reduced shall stand cancelled. The valuation report was also approved in the Board. The two directors of the Company were authorized to sign and certify the list of the creditors.

7. It is stated that the Board of Directors had sent notice and Explanatory Statement dated 15.02.2023 convening an Extra-Ordinary General Meeting to the equity shareholders on 17.02.2023 and the Company also passed a Special Resolution as required under Section 66 of the Companies Act, 2013 in the general meeting. The Chairman of the meeting explained to the members that the resolution, if passed, would result in reduction of capital from Rs.56,50,00,000/- (Rupees Fifty Six Crores Fifty Lakhs only) divided into 5,65,00,000 equity shares of Rs.10/- each to the equity capital of Rs.34,12,32,910/- (Rupees Thirty Four Crores Twelve Lakhs Thirty Two Thousand Nine Hundred and Ten only). It is stated that equity shareholders' holding 100% share of the

Petitioner Company were present in the meeting through their authorized representatives under Section 113 of the Act who unanimously passed the Special Resolution approving the reduction of equity share capital of the Petitioner Company.

8. The shareholding structure prior to and post the reduction of the share capital is tabulated as below **(Page-19)**.

Sr. No.	Name of the Shareholders	Shareholding prior to Reduction of Equity Share Capital	Shareholding Post Reduction of Equity Share Capital	Number of shares proposed to be cancelled/ extinguished
1.	IndInfravit Trust	5,64,99,999	3,41,23,290	2,23,76,709
2.	Ms. Rekha NB* jointly with IndInfravit Trust	1	1	0
	Total	5,65,00,000	3,41,23,291	2,23,76,709

*Shares are held by nominee shareholder on behalf of IndInfravit Trust

9. It is stated that the Form and Receipt of MGT-14 Form submitted by the Company with the Registrar of Companies are annexed as **Annexure-8.** The minutes are also annexed as **Annexure-9**. The valuation report is annexed as **Annexure-10**.

10. It is stated that the proposed reduction does not involve the extinction/reduction of any liability in respect of unpaid capital and it involves the cancellation of the paid-up share capital only. It has sufficient assets to meet its obligations towards its creditors after

the proposed reduction and their interest would not be jeopardized. Nor the proposed adjustment would in any way adversely affect the ordinary operations of the Company or the ability of the Company to honour its commitments or pay its debt in the ordinary course of business. The necessary declaration and certificate issued by the Statutory Auditors are annexed as **Annexure-11**. It is stated that there are no deposits nor the Company has arrears of repayment of deposits or any interest thereon. A declaration and certificate to this effect are annexed as **Annexure-12**. It is stated that the Statutory Auditor has given a certificate that the reduction of share capital is in conformity with the Indian Accounting Standards specified under Section 133 of the Act annexed as **Annexure-13**.

11. It is stated that since it has more than adequate assets including cash and balances to satisfy all its creditors, the words "and reduced" be not added to the name of the Company. It is stated that there is no pending inspection, inquiry or investigation against the Company nor there is any winding up petition nor any litigation is pending against the Company under the Act. It is stated that the shares of the Company are not listed on Stock Exchanges. The form of the minutes proposed to the Registrar under Section 66(5) is annexed as **Annexure-16**.

12. This Tribunal vide an order dated 22.03.2023 after considering the Petition and documents filed along with the Petition

and the representation made by the Authorized Representative for the Petitioner Company, directed the Petitioner Company to serve notice of the Petition within a period of 7 days to the Central Government, Registrar of Companies having jurisdiction over the matter, post publication of the notice in the prescribed form in the newspapers (English) "**Business Standard**" (All India Edition) and (Tamil) "**Dina Malar**" (Tamil Nadu Edition) where the Registered Office of the Company situated and upload the factum of the Petition and the notice of hearing on the website.

13. Pursuant to the said directions vide above order, the Petitioner Company served the notices on the Central Government and the Registrar of Companies and also caused the publication. The Company also served the notice to the Income Tax department, GST department and National Highway Authority of India as well as on the persons whose names appear in the list of Unsecured Loan Creditors/Unsecured Trade Creditors of the Company. An affidavit to this effect has been filed vide S.R.No.1571 dated 10.04.2023.

14. On getting notice of the Petition, the Regional Director filed his report stating that as per the records of ROC, Chennai, the Company is regular in filing the statutory returns which have been filed up to 2021-22 and there is no complaint/prosecution/inspection/investigation pending against the

Company. It is stated that the Regional Director has no objection to the proposed reduction of share capital.

15. Except the Regional Director, none filed any reply or objection to the scheme of reduction of equity share capital by the Company.

16. On 25.07.2023 this bench sought following clarifications from the Petitioner.

1. In para 8 of the pleading, it is stated "the reduction shall be effected by returning an amount Rs.1,18,33,20,000/- to the members" but in para 7, in the summary of assets, the total share capital and reserves of the company is stated as Rs.60.00 crore (approx.) only.

2. On what basis capital reserves were created, break-up be provided.

3. The application was filed on 25.02.2023, only the audited balance sheet as on 31.03.2022 has been filed. Applicant is directed to file audited financial statements upto 31.03.2023.

17. In response, the Petitioner filed a memo dated 11.08.2023 and explained that the Petitioner Company has Cash and Bank balance of Rs.40,16,06,000/- (Indian Rupees Forty Crores Sixteen lakhs and Six Thousand Only) and Other Cash Balance consisting of Term Deposits of Rs.82,97,31,000/- (Indian Rupees Eighty Two Crores Ninety Seven Lakhs Thirty One Thousand Only) thereby aggregating to a sum of Rs.1,23,13,37,000 (Indian Rupees One Hundred Twenty-Three Crores Thirteen Lakhs Thirty-Seven Thousand Only). The Audited financial statements have been

adopted by the board of directors of the Petitioner Company as well. The same is enclosed herewith as Annexure-1.

18. Concerning capital reserves it is stated that there is no capital reserves in the books of the Petitioner Company as on date of filing of this Petition. It is stated that the Company has sufficient cash and bank balance as on 31st March 2023. The Board of Directors of the company desired to pay the excess funds kept unutilized to the shareholders and pay-out to the shareholders in excess of the retained earnings available in the books as on 31st March 2023. The difference between the total amount paid to the shareholders from the Paid up share capital account and the amount available in the Retained Earnings as on 31st March, 2023 post the approval of this Tribunal shall be treated as Capital Reserves as the said amount will be paid out of the cash and bank balances available. The Capital Reserves shall be created (by debiting the capital reserves so created) in the books of the company post effecting the reduction of share capital. The details of fund utilization is provided as under,

S. No.	Description	Amount in Rupees
A.	Total Paid up share capital to be reduced (2,23,76,709 Equity shares at Face value of Rs.10 each) **[A]**	22,37,67,090
B.	Premium proposed to be paid for the shares proposed to be reduced (2,23,76,709 Equity shares at Premium of Rs.42.88177 (approx.) each) **[B]**	95,95,52,910
	Total amount to be paid to the Shareholders from the Cash and Bank Balance Available **[A+B]**	**118,33,20,000**

The workings of Capital Reserve creation is provided as under:

A.	Total amount to be paid to the Shareholders [A]	118,33,20,000
B.	**Less:** Amount to be adjusted from the Retained Earnings as per the Balance Sheet as at 31st March, 2023 **[B]**	40,71,89,000
C.	**Less:** Amount reduced from the Equity Share Capital Account as at 31st March, 2023 **[C]**	22,37,67,090
	Difference will be created as Capital Reserve in the Balance Sheet post reduction **[A- B-C]**	55,23,63,910

19. Further, in the memo the latest Audited Financial Statement as on 31.03.2023 has been annexed, wherein the financial of the Company is recorded as follows,

Particulars	**Amount**
EQUITY	
Equity Share Capital as at 31st March, 2023	56,50,00,000
Proposed Reduction of Equity Share capital	22,37,67,090
Balance Equity Shares after the proposed reduction	34,12,32,910
Retained Earnings as at 31st March, 2023	40,71,89,000
Amount proposed to be utilized from Retained Earnings	40,71,89,000
Cash and Bank balances as at 31st March, 2023	123,13,37,000
Cash proposed to be returned back to Shareholders	118,33,20,000
Balance Cash available after reduction	4,80,17,000

20. We have heard Ld. Counsel for the Petitioner Company and perused the records.

21. It is seen from the record that the Petitioner Company is a Private Limited Company. It was incorporated on 02.11.2005. It's Authorized Capital was Rs.60,00,00,000/- (Rupees Sixty Crores

only) and Paid-Up Capital was 56,50,00,000/- (Rupees Fifty Six Crores Fifty Lakhs only) divided into equity shares of Rs.10/- each. Its Registered Office is situated within the jurisdiction of this Tribunal. The object of the Company was to promote, develop, finance, establish, construct, build, install, equip, operate and maintain the infrastructure including roads etc., as enumerated above. The Petitioner Company has submitted the Audited Financials for the year ended 31.03.2022 and 31.03.2023 along with the Independent Auditor's Reports dated 29.04.2022 and 22.04.2023. It was opined that the financial statements prepared by the Company complied with the Accounting Standards specified under Section 133 of the Act and none of the directors were found to be disqualified as on 31.03.2023 from being appointed as a Director. The Auditor has reported that the Company does not have any pending litigations which would impact its financial position. The Company does not have any long term contracts including derivative contracts. No funds have been advanced or loan given to any persons nor the Company received any funds from any persons or entities.

22. In the instant Petition, the Petitioner has explained the purpose for reduction of the share capital to 2,23,76,709 (Two Crores Twenty Three Lakhs Seventy Six Thousand Seven Hundred and Nine only) equity shares of Rs.10/- each fully paid-up out of

existing 5,65,00,000 (Five Crores Sixty Five Lakhs only) of equity shares of Rs.10/- each fully paid up.

23. In the instant case as seen from the Report and Auditor's Certificate, there are no Secured Creditors. There are one Unsecured Loan Creditor and 63 Unsecured Trade Creditors which list has been confirmed by the Directors.

24. The Regional Director in his reply has not raised any substantial objection as to the reduction of the share capital by the Petitioner Company. It has reported that no investigation/ complaint/prosecution/investigation is pending against the Company. No other persons including income tax authorities on whom the notices were served has filed any objection to the scheme of reduction of share capital by the Petitioner Company.

25. Article 47 of the Articles of Association of the Petitioner Company provides that the Company may, from time to time, by Special Resolution reduce its share capital in any manner permitted by law. In this case, the Board of Directors held a meeting on 20.01.2023 approving the reduction of the equity share capital as **Annexure-5**. Thereafter, sent notices and convened an Extra-ordinary General Meeting of the equity shareholders of the Petitioner Company. The meeting was held on 17.02.2023 where the Special Resolution was passed. In the meeting, equity

shareholders holding 100% shares were present through their authorized representatives. The valuation of shares was also done by the Petitioner Company and the Valuation Report to this effect is annexed as **Annexure-10.**

26. The Petitioner Company has also explained that the proposed reduction does not involve the extension of the reduction of any liability in respect of unpaid capital. It involves the cancellation of paid-up share capital only. It has sufficient assets to meet its obligations towards its creditors after the proposed reduction and the interest would not be affective in any manner nor the reduction would affect the ordinary operations of the Company or its ability to honour its commitments or pay its debts in the ordinary course of business. This declaration has been given by the directors and a certificate to this effect has been issued by the Statutory Auditors of the Company. The record shows that there are no deposits nor the Company is arrears of repayment of deposits or interest thereon. It is also certified by the Statutory Auditor that the reduction of the share capital is in conformity with the Indian Accounting Standards specified under Section 133 of the Act.

27. For the aforesaid discussions, we allow the Petition and approve the reduction of equity share capital of the Petitioner Company which was approved by the equity shareholders at the Extra-Ordinary General Meeting held on 17.02.2023 holding that

the paid up share capital of the Petitioner Company i.e. *"Western Andhra Tollways Private Limited is henceforth Rs.34,12,32,910/- (Thirty Four Crores Twelve Lakhs Thirty Two Thousand Nine Hundred and Ten only) divided into 3,41,23,291 equity shares of Rs.10/- each as reduced from Rs.56,50,00,000/- (Rupees Fifty Six Crores Fifty Lakhs only) divided into 5,65,00,000 equity shares of Rs.10/- each. At the date of the registration of this minute, 3,41,23,291 equity shares of Rs.10/- each have been issued and deemed to have been fully paid-up."*

28. For the aforesaid discussions, we are of the view that it would be just and proper to confirm the reduction of share capital of the Petitioner Company as resolved by the members of the Company by passing a Special Resolution. We therefore approve and confirm the proposed reduction of share capital as prayed for. The Petitioner Company shall not be required to add the words "And Reduced" as a suffix.

29. Notwithstanding the above, if there is any deficiency found or violation committed qua any enactment, statutory rule or regulation, the sanction granted by this Tribunal will not come in way of action being taken, in accordance with the law, against the concerned persons, directors and officials of the Petitioner.

30. 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 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 under any law. Further, all compliances as are required to be done by the Petitioner Company upon this order confirming the reduction of share capital and security premium reserve shall be duly complied with in relation to SEBI, FEMA and Income Tax laws as may be applicable.

31. The Petitioner Company shall publish the order of confirmation of the reduction of paid-up equity share capital in the editions of 'Dina Malar' in Tamil and 'Indian Express' in English and file a certified copy of this order with the Roc within 30 days from the date of this order.

32. Accordingly, this petition is **allowed and disposed off.**

-Sd-

VENKATARAMAN SUBRAMANIAM
MEMBER (TECHNICAL)

-Sd-

SANJIV JAIN
MEMBER (JUDICIAL)

Suguna

*Order pronounced under Rule 151 of NCLT Rules 2016, by **Hon'ble Judicial Member Sanjiv Jain** on behalf of the Bench Comprising of **Sanjiv Jain, Member (Judicial)** and **Venkataraman Subramaniam, Member (Technical)***

Court Officer