

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH (COURT- I) CHENNAI**

ATTENDANCE CUM ORDER SHEET OF THE HEARING
HELD ON **26.04.2024** THROUGH VIDEO CONFERENCE

PRESENT: HON'BLE SHRI. SANJIV JAIN, MEMBER (JUDICIAL)
HON'BLE SHRI VENKATARAMAN SUBRAMANIAM, MEMBER (TECHNICAL)

Application No :
Petition No : CP(CA)/89(CHE)/2023
Name of Petitioner :
& Pfizer Healthcare India Pvt Ltd
Name of Respondent :
Section : Sec 66 of CA, 2013

ORDER

Present: Mr. Ashwin Raman, Ld. Counsel for Petitioner.

Vide separate order pronounced in the open court, the petition is allowed.

File be consigned to records.

-sd-
[VENKATARAMAN SUBRAMANIAM]
MEMBER (TECHNICAL)

MS

-sd-
[SANJIV JAIN]
MEMBER (JUDICIAL)

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH - I, CHENNAI**

CP/89(CHE)/2023

*(Filed under Section 52 and 66 and other applicable provisions of the Companies Act,
2013 and the National Company Law Tribunal (Procedure for Reduction of Share Capital
of Company) Rules 2016,*

In the matter of *Pfizer Healthcare India Private Limited*

Pfizer Healthcare India Private Limited

Represented by its Resident Director and Head- Finance,

Ms.Sweta Agarwal

CIN: U24232TN2009PTC073563

Having its Registered Office at

Emerald Building No.237,

Anna Salai, Chennai – 600 006

... *Petitioner Company*

Order Pronounced on 26th April 2024

CORAM

SANJIV JAIN, MEMBER (JUDICIAL)

VENKATARAMAN SUBRAMANIAM, MEMBER (TECHNICAL)

For Petitioner(s): Pawan Jhabakh, Advocate

For Regional Director: Avinash Krishnan Ravi, Advocate

ORDER

(Hearing Conducted through VC)

This Petition has been filed by *Pfizer Healthcare India Private Limited* under the provisions of Section 52 and 66 of the Companies Act, 2013 read with the National Company Law Tribunal (Procedure for

Reduction of Share Capital of Company) Rules 2016, seeking reliefs as follows;

- a. *That the reduction of the Equity Share Capital of the Petitioner duly approved by the equity shareholders of the Petitioner Company at the Annual General Meeting thereof held on Friday, 04th August 2023 at Chennai be confirmed by this Hon'ble Tribunal so as to be binding on all shareholders and creditors of the Petitioner Company;*
- b. *That the reduction of the Equity Share Capital of the Petitioner duly approved by the equity shareholders of the Petitioner Company at the Annual General Meeting thereof held on Friday, 04th August 2023 at Chennai be confirmed by this Hon'ble Tribunal so as to be binding on all shareholders and creditors of the Petitioner Company;*
- c. *That notices may be ordered to all the creditors as provided for rule 3(1)(iii) of the National Company Law Tribunal (Procedure for reduction of share capital of the Company) Rules, 2016;*
- d. *That directions may be given for the publication of advertisements as provided for under Rule 3(3) of the National Company Law Tribunal (Procedure for reduction of share capital of the Company) Rules, 2016 in an English and vernacular newspaper having State-wide circulation;*
- e. *That the proposed minute be approved by this Hon'ble Tribunal;*
- f. *That the Petitioner Company be not required to add the words "and reduced" to its name as the last words thereof, and*
- g. *That this Hon'ble Tribunal may pass such further orders as it may deem fit and proper in the facts and circumstances of the case.*

2. The main object of the Company as set out in the Clause of the Memorandum of Association of the Company, is briefly reproduced as under;

- a) *To carry on the business of dealers, manufacturers, agents, distributors of drugs, bulk drugs and pharmaceuticals of every description and application with indigenous and/or imported technology, pharmaceutical formulations like liquids, capsules, tablets, powders, mixtures, antibiotics*

enzymes and fluids of every description, all intermediaries and by products, surgical and health aids of varied nature like syringes, gloves, surgical and sanitary towels, napkins, pharma-based cosmetics etc.

3. It is stated that the Authorized Share Capital of the Company as on 31.03.2023 is Rs.8,00,00,000 (Rupees Eight Crores only) divided into 80,00,000 Equity shares of Rs.10 (Rupees Ten) each. The issued, subscribed and paid-up capital of the Company as on 31.03.2023 is Rs.6,92,62,450/- (Rupees Six Crores Ninety-Two Lakhs Sixty- Two Thousand Four Hundred and Fifty only) divided into 69,26,245 Equity shares of Rs.10 (Rupees Ten) each.

4. It is stated that the Statutory Auditors of the Company by their certificate dated 10.08.2023 annexed at **Page No.228** to the Petition have confirmed that the Accounting Treatment proposed by the Company is in conformity with the Accounting Standards specified by the Central Government under Section 133 of the Act, 2013.

5. The list of creditors (both secured and unsecured) of the Company as on 31.07.2023 as certified by the Directors of the Company is annexed as Annexure A7. It is stated that the Company has no secured creditors and has 567 unsecured creditors amounting to Rs. 17,78,85,06,328 as on

31.07.2023. It is stated that 90% of its unsecured creditors as on 31.07.2023 comprise of payables towards group companies. A certificate issued by the statutory auditors of the Petitioner Company, certifying the list of creditors as on 31.07.2023 is annexed as *Annexure A8* of the Petitioner Company typeset.

6. It is stated that the company has not accepted any deposits and therefore there are no arrears in repayment of any deposit or interest thereon as on the date of Application. A declaration to that effect has been filed by the Director of the company which is placed at "*Pages 229 and 230*" of the typed set of the Petition. The Statutory Auditors have verified and certified that the company has no arrears in repayment of deposit or interest and the same is placed at "*Pages 231 to 233*" of the typed set of the Petition.

7. It is stated that *Clause 4 & 13* of the Articles of Association of the Company empowers the Petitioner Company for Capital Reduction, which are as follows;

4. The Authorized Share Capital of the Company shall be as contained in the 5th Clause of the Memorandum of Association of the Company, as may be amended. from time to time by the Company in accordance with the provisions of the Companies Act, 2013.

The Company has power from time to time to increase or reduce its capital and to divide the shares into several classes and to attach thereto, respectively, such preferential, cumulative, convertible, guarantee, qualified or other special rights, privileges, conditions or restrictions, as may be determined by or in accordance with these presents and to vary, modify or abrogate any such right, privileges or conditions or restrictions in such manner as may for the time being be permitted by these presents or the said act or any other legislative provisions for the time being in force in that behalf.

13. The Company may, by Special Resolution, 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

(c) any share premium account

8. It is stated that the Company has no adverse qualification remark, or reservations made by the auditor in the audited financial statements for the year ended 31.03.2023 of the Company. Further, the Petitioner has no adverse qualification remark or reservation or pending litigation which would impact financial statements of the Company and the Company has no investigation proceedings initiated or pending under the Companies Act 2013 or the Companies Act 1956. The latest financial position of the Company is extracted as hereunder;

Particulars	As on 31 st July 2023 (Amount in INR)	As on 31 st March 2023 (Amount in INR)
Non-current assets		
Property, plant and equipment	16,14,65,54,868	16,09,56,12,296
Capital work in progress	72,97,02,452	12,72,277,779
Intangible assets	5,00,33,553	5,38,82,289
Right-of-use assets	66,66,67,419	70,03,29,757
Financial assets	26,56,52,158	15,67,04,275
Tax assets	2,45,94,079	2,62,14,760
Non-current tax assets (net)	22,40,22,293	16,86,53,673
Total non-current assets	18,10,72,26,822	18,47,36,74,830
Current assets		
Inventories	4,52,33,76,619	4,54,05,53,672
Financial assets		
i. Trade receivables	2,07,56,93,393	3,61,73,13,523
ii. Cash and cash equivalents	4,72,45,17,449	2,23,33,28,170
iii. Loans	9,84,504	31,53,56,16
iv. Other financial assets	85,42,03,615	50,42,81,066
Other current assets	46,96,66,510	46,02,74,145
Assets held for sale	1,38,83,33,348	1,38,83,33,348
Total current assets	14,03,67,75,438	12,77,56,19,539
Total Assets	32,14,40,02,260	31,24,92,94,369
EQUITY AND LIABILITIES		
Equity		
i. Equity share capital	6,92,62,450	6,92,62,450
ii. Other Equity		
Securities Premium	5125,56,52,320	5125,56,52,320
Retained Earnings	-4070,56,12,858	4117,51,93,020
Capital Reserve	55,02,04,305	55,02,04,305
Other reserves		
Total equity	11,16,95,06,217	10,69,99,26,055
LIABILITIES		
Non-current liabilities		
Financial liabilities	12,74,87,53,244	10,68,21,03,244
Lease Liabilities	83,43,81,117	86,71,92,689
Provisions	35,13,49,894	30,94,10,111
Other non-current liabilities	-	
Total non-current liabilities	13,93,44,84,255	11,85,87,06,044
Current liabilities		
Financial liabilities		
i. Borrowings	2,84,13,31,550	4,82,52,37,794
ii. Trade payables	2,76,12,36,314	

Particulars	As on 31 st July 2023 (Amount in INR)	As on 31 st March 2023 (Amount in INR)
(a) total outstanding dues of micro and small enterprises	8,86,10,646	6,73,61,783
(b) total outstanding dues of creditors other than micro and small enterprises	2,67,26,25,668	2,87,76,40,041
iii. Lease Liabilities	9,27,33,342	9,27,33,342
iii. Other financial liabilities	79,41,81,047	12,40,73,777
Other current liabilities	50,73,38,922	66,04,24,920
Provisions	4,31,90,613	4,31,90,613
Total current liabilities	7,04,00,11,788	8,69,06,62,270
Total Liabilities	20,97,44,96,043	20,54,93,68,315
TOTAL EQUITY & LIABILITIES	32,14,40,02,260	31,24,92,94,369

9. It is stated that the Board of Directors of the Company in the meeting held on 28.07.2023 has approved the reduction of the share capital of the Company. The copy and extract of the resolution passed by the Board of Directors of the Petitioner company is annexed as “Annexure-A4” of the Company Petition typeset.

10. It is stated that on 04.08.2023, a Special Resolution was passed by the Shareholders of the company at the Annual General Meeting (AGM) held at the Registered Office of the Company under Section 66 of the Companies Act, 2013. The Special Resolution is extracted hereunder:

“RESOLVED THAT pursuant to Section 52 and Section 66 of the Companies Act, 2013 read with National Company Law Tribunal (Procedure for reduction of share capital of Company) Rules, 2016, and all such laws as may be applicable from time to time, if any, (including any statutory modification(s) or re-enactment thereof for time being in force) and in accordance with Clause V of the- Memorandum of Association and Clauses 4 and 13. of the Articles of

Association of the Company and subject to the approval of the Hon'ble National Company Law Tribunal ('NCLT'), Chennai and any other statutory authorities, as the case may be, and subject to the approval of members in the General meeting, consent of the Board of directors be and is hereby accorded to reduce the share capital of the Company by setting off accumulated losses aggregating to INR 4,117 Crores (Indian Rupees Four thousand one hundred and seventeen crores) by utilizing the corresponding amount out of the balance of INR 5,125 Crores (INR Rupees Five thousand one hundred and twenty-five crores) standing to the credit of the securities premium account as at 31 March, 2023.

RESOLVED FURTHER THAT *the above reduction of capital shall be given effect only through adjusting securities premium account against accumulated losses and shall not entail any payment, by cash or otherwise to equity shareholders of the company.*

RESOLVED FURTHER THAT *the proposed reduction shall be effected by debiting the securities premium account and crediting profit and loss account (accumulated losses).*

RESOLVED FURTHER THAT *subject to the approval of the Hon'ble NCLT, Chennai and any other appropriate authority, as may be applicable, the Board do hereby note that the Company shall not be required to add the word "And Reduced" to its name as the last words thereof.*

RESOLVED FURTHER THAT *for the purpose of giving effect to the above-mentioned resolution, all the Directors of the Company be and are hereby severally authorized to give such direction as they may think fit and proper, including direction for settling any questions or difficulties that may arise and to do all such acts, deeds, matters, and things of whatsoever nature as may be deemed expedient for giving effect to the above resolution.*

RESOLVED FURTHER THAT *for the purpose of giving effect to the above resolution, Mrs. Mahalakshmi Barath - Finance and Tax Lead and Mr. Aparajith Jayaraman - Company Secretary or any of the Directors of the Company and / or any other person as may be nominated by the Company, be and are hereby severally authorized to take all the necessary steps to give effect to the resolution(s) pertaining to reduction of capital of the Company, including but not limited to:*

a. Filing of application/petition and/or any other information/documents with the Hon'ble NCLT and/or any other regulatory authorities for their approval of

the proposed reduction of capital or giving effect to any of the provisions thereto;

b. Filing applications/petitions before the NCLT or such other tribunal / authority, seeking appropriate directions for dispensation from the procedure(s) prescribed under Section 66 of the Companies Act, 2013, read with National Company Law Tribunal (Procedure for reduction of share capital of Company) Rules, 2016, including any statutory modification(s), re-enactments or amendments thereof,

c. Filing applications/petitions before the NCLT or such other tribunal / authority, seeking appropriate directions for dispensation from addition of the words "and reduced" to the name of the Company as contemplated under Section 66 of the Companies Act, 2013 (or any statutory re-enactment thereof);

d. Representing the Company before Hon'ble NCLT or before any other judicial, quasi-judicial governmental or statutory authority;

e. Filing of any affidavit, petitions, pleadings, applications, forms or reports before the Hon'ble NCLT or any statutory or regulatory authority, including the Registrar of Companies, Regional Director, or such other authority as may be required in connection with the proposed reduction of capital and/or in connection with its sanction thereof and to do all such acts, deeds or things as they may be necessary in connection therewith and the incidental thereto;

f. Signing all applications, petitions, documents, undertakings, affidavits, letters relating to the proposed reduction of capital, and represent the Company before any regulatory authorities and the Hon'ble NCLT in relation to any matter pertaining to the proposed reduction of capital or delegate such authority to another person by a valid power of attorney;

g. Engage Counsels, Advocates, Solicitors, Chartered Accountants, Company Secretaries and other professionals to sign and execute Vakalatnama wherever necessary and sign and issue public advertisements and notices;

h. Withdraw or amend, as may be necessary, company applications/petitions at any stage in case any changes and/or modifications are suggested/required to be made or any condition imposed, whether by any shareholder, creditor, court and/or any other authority, and to do all such acts, deeds and things as they may deem necessary and desirable in connection herewith and incidental hereto;

i. Do all such acts, deeds, matters and things as may be deemed necessary, expedient, usual or proper and to settle any question or difficulty that may arise including things as may be necessary or required to give effect to the proposed reduction of capital and for matter connected therewith or incidental thereto.

RESOLVED FURTHER THAT, all the Directors and Company Secretary of the Company be and are hereby severally authorized to delegate powers, issue power of attorneys and authorization letters to the executives, consultants, professionals, as may be required in connection with the implementation of the proposed reduction of capital.”

11. It is stated that the Company has two shareholders, and both were present at the Annual General Meeting through their respective Authorized Representatives and all the present shareholders voted in favor of the special resolution approving the reduction of capital unanimously. The details of the voting exercised by the shareholders in approving the reduction in capital is extracted below:

Sr. No.	Name of Shareholder	Number of shares and voting power	Manner of voting
1	Hospira Pte. Ltd.	69,26,235 equity shares representing 99.99% voting power	Show of hands by authorized representative
2	Pfizer Global Holdings BV	10 equity shares representing 0.01% voting power	Show of hands by authorized representative

12. It is stated that the shareholding structure of the Company prior and post the proposed reduction of equity share capital is extracted as hereunder:

Shareholding Prior to the Reduction of Capital:

Sr. No.	Name of Shareholder	Number of shares	Percentage
1	Hospira Pte. Ltd.	69,26,235	99.99%
2	Pfizer Global Holdings BV	10	0.01%
	Total	69,26,245	100%

Shareholding Post Reduction of Capital

Sr. No.	Name of Shareholder	Number of shares	Percentage
1	Hospira Pte. Ltd.	69,26,235	99.99%
2	Pfizer Global Holdings BV	10	0.01%
	Total	69,26,245	100%

13. It is stated that the provisions of Sections 52 and 66 of the Companies Act 2013 provide for reduction of the Equity Share Capital in any manner, including cancellation of any paid-up share capital which is lost or is unrepresented by available assets. Accordingly, the Company proposes to reduce its equity share capital by setting off accumulated losses/retained earnings aggregating to INR 4,117 Crores (Indian Rupees Four Thousand One Hundred and Seven Crores) by utilizing the corresponding amount out of the balance of INR 5,125 Crores (Indian Rupees Five Thousand One Hundred and Twenty-Five Crores) standing to the credit of the Securities Premium Account as on 31.03.2023, Such

balances are appearing in Note 9 of the audited financial statements for the financial year ended 31.03.2023.

14. It is stated that the proposed reduction and restructuring of the Share Capital neither involves diminution of any liability in respect of unpaid capital nor does it contemplate any outlay/repayment to the shareholders of the Company. It is stated that the proposed reduction of capital does not in any manner whatsoever prejudice or affect the rights of the creditors or any stakeholders.

15. It is stated that since it has more adequate assets including cash and bank balances to satisfy all its creditors, the words "and reduced", not be added to the name of the Company as the last words thereof. The Company is confident that the present and future cashflows expected to be generated will not only be sufficient to timely service and ultimately discharge all the existing and proposed borrowings but will also not impact in any manner the ability of the Company to pursue its business opportunities and the Company will remain a going concern for the foreseeable future.

16. It is stated that rationale for the reduction of capital is to reflect the assets and liabilities of the Company at their true values and further, to streamline the Balance Sheet of the Company. The reduction is proposed as the accumulated losses/retained earnings have wiped-off the value represented by the share capital of the Company. This has given rise to the need for re-adjustment of capital in its books of accounts. Accordingly, with the future prospect of growth and value addition to the Company and its Shareholders, the Company proposes to re-align the relationship between its capital and assets. Therefore, it proposes to reduce the equity share capital of Company in accordance with Sections 52 and 66 of Companies Act, 2013 read with National Company Law Tribunal (Procedure for reduction of share capital of Company) Rules, 2016.

17. It is stated that the Company will comply with all the relevant Accounting Policies and Indian Accounting Standards applicable as regards to accounting for the reduction of capital which shall be undertaken in the following manner:

- a. Debiting the balance in Securities Premium account by INR 4,117 Crores with a corresponding credit of INR 4,117 Crores to the Profit and Loss account.

b. Consequent to the reduction of capital, the books of accounts of the Petitioner Company will reflect the Other Equity of the Company in the following manner:

Particulars	Prior to capital reduction	Proposed reduction	Post reduction
Securities Premium account	INR 5,125 crores	INR 4,117 crores	INR 1,008 crores
Profit and Loss account (Dr) i.e., accumulated losses / retained earnings	INR 4,117 crores	INR 4,117 crores	Nil

c. The adjustment of the debit balance in Profit and Loss Account against the credit balance in the Securities Premium Account shall not entail any payment, in cash or otherwise to equity shareholders of the Company.

18. We have heard Learned Counsel for the Petitioner Company and Perused the documents placed on record.

19. This Tribunal vide its order dated 13.09.2023, *inter alia* had directed the Petitioner Company to give notice of the application to the Ministry of Corporate Affairs through the office of the Regional Director, Registrar of Companies, Chennai, Reserve Bank of India and creditors of the Petitioner Company and to cause the publication of notice in "The New Indian

Express" (Tamil Nadu Edition) and "Dinamalar Tamil (Tamil Nadu Edition) for inviting objections if any from the Respondents/parties.

20. In pursuance of the same, the Petitioner Company, filed an Affidavit of Service before this Tribunal on **04.10.2023** vide **S.R.No.4208** in relation to the directions issued by the Tribunal. A perusal of the same manifests the fact that the Petitioner Company had issued a newspaper advertisement on 19.09.2023 in "The New Indian Express" (Tamil Nadu Edition) and "Dinamalar Tamil (Tamil Nadu Edition).

21. Consequent thereto, upon receipt of the notice, the Regional Director submitted its observation Vide **S.R.No.5092** dated **12.12.2023** that the Directors as well as the Auditors of the Company have furnished the certificate to the effect that the Company has no arrears in repayment of deposits or interest thereon. Further, it is stated that the Company is regular in filing the statutory returns and filed upto 2022-23 and that there is no complaint / prosecution / investigation / inspection pending against the Company.

22. In Para 6 of the RD report, it is stated that Roc, Chennai vide report dated 21.11.2023 has pointed out that the company has not filed Form BEN-2 in accordance with provision of Section 90 of the Companies Act,

2013 as one of shareholder viz., Hospira Pte Ltd., holding 99.99% of shares in the Petitioner Company, thus BEN- 2 is required to be filed with the Registrar in accordance with the provision of Section 90 of the Companies Act, 2013 read with Companies (Significant Beneficial Owner) Rules, 2016. Hence, the company has to undertake to file BEN-2 for compliance of Section 90 of the Companies Act, 2013 and also undertake to file adjudication application before the Registrar of Companies, Tamil Nadu, Chennai for violation of Section 90 of the Companies Act, 2013 read with Rules made therein.

23. The RD in para 7 of its Report has stated as follows;

7. The reduction of share capital filed with the application has been examined and it is has been decided not to make any objection to the reduction of share capital, except in para 6 of this report. It is therefore prayed that this Hon'ble National Company Law Tribunal Bench at Chennai may dispose of the matter on merits and pass such order / orders as deemed fit and proper.

24. The Petitioner Company has filed reply affidavit to the observation made in para 6 of the RD report vide **S.R.No.5156** dated **14.12.2023**.

25. It is stated that Hospira Pte Ltd is the beneficial as well as the registered owner of the shares in the Petitioner Company. A perusal of the Form 2 and PAS 3 documents attached to this affidavit evidence with the

filings made with the Ministry of Corporate Affairs, shows that "Hospira Pte Ltd" is the beneficial owner. It is stated that the Registrar of Members of the Company has attached to this affidavit, further evidence that "Hospira Pte Ltd" is the beneficial and registered owner. It is stated that the reporting and forms filed with the Reserve Bank of India also evidence that "Hospira Pte Ltd" is the beneficial owner.

26. It is stated that present observation made by the office of the Regional Director does not in any manner affect or interfere with the proposed capital reduction pending before this Tribunal. It is stated that the rights of the Regional Director remain unaffected and unfettered, and the Petitioner Company undertakes to co-operate, and submit documents with the office of the Regional Director as and when required and called upon.

27. Despite notice being served to the Reserve Bank of India and paper publication made on 19.09.2023 in The New Indian Express (All India Edition) in English and Dina Malar (Tamil Nadu Edition) in Tamil, there is no representation from Reserve Bank of India. Under such circumstances this Tribunal in terms of provisions of the Companies Act, 2013 presumes that the Reserve Bank of India does not have any objection to the sanction

of the Scheme of Reduction of Share Capital. A copy of the Notice served to the Statutory Authorities viz, Reserve Bank of India are placed as a Separate typeset vide **S.R.No.4208** dated **04.10.2023**.

28. It is also seen from the Affidavit of Service dated **04.10.2023** vide **S.R.No.4208** that the Petitioner Company has served notice to 567 Unsecured Creditors and the same is placed in the Affidavit of Service typeset.

29. Vide order dated 20.03.2024, this Tribunal had directed the Petitioner Company to file an additional affidavit clarifying the adjustment of securities premium towards writing off of accumulated losses in compliance with Section 52(3) of the Companies Act, 2013.

30. The Petitioner Company complied the order of this Tribunal dated 20.03.2024 and filed the Additional Affidavit dated 16.04.2024 vide S.R.No.1883.

31. It is stated that the Petitioner Company has incurred significant losses in its business during the preceding financial years, as is evident from the tabulated particulars below:

Financial Year (Year ended 31 st March)	Net Profit/(Loss) After tax (as per Books) (Rs. in lakhs)
FY 2022 – 2023	302,49
FY 2021 – 2022	(56,03)
FY 2020 – 2021	96,55
FY 2019 – 2020	(53,410)
FY 2018 – 2019	(1411,56)
Years Prior to FY19	(2514,97)
Total	(4117,62)

32. It is stated that the accumulated losses had been significantly eroding the net worth of the Petitioner Company and in light of the future profitability projections, the Petitioner Company has preferred the Petition under Section 66 of the Act so that the true financial health and position of the Company may be depicted in its books.

33. After undertaking operational level changes, it is anticipated and envisaged that the Petitioner Company shall start earning profits with effect from FY 2023-24 (i.e. for the financial year ended 31.03.2024). It is stated that the accumulated losses of the Petitioner Company is Rs.4,117 Crores (as at 31.03.2023) have been reduced to Rs.4,070 Crores (by 31.07.2023).

34. Accordingly, with a view to right-size its Balance Sheet to reflect the true financial state of affairs, the Petitioner Company has proposed setting off the accumulated losses of Rs.4,117 Crores appearing in its books as at 31.03.2023 against the positive balance of Rs. 5,125 Crores appearing

in its books as Securities Premium as at 31.03.2023. The adjustment to Securities Premium is proposed to be of an amount which is equivalent to the amount of accumulated losses-Le. Rs. 4,117 Crores (appearing in books as at 31.03.2023).

35. This position has also been summarized by the Petitioner Company in Para 23 of its Petition wherein the below accounting entry proposed by the Petitioner Company finds mention:

Securities Premium A/c Dr.	INR 4,117 Crores
To Retained Earnings A/c	INR 4,117 Crores

36. Based on the above, the Capital Reduction proposed by the Petitioner Company does not involve any payout and is proposed to be implemented merely by way of the above accounting entry in its books.

that the above exercise would lead to debiting the securities premium account leading to a reduction/utilization of securities premium, the application whereof is governed by the provisions of Section 52 of the Act, reference may be made to the provisions of Section 52 of the Act which have been extracted below for the convenience of this Tribunal:

"52. (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"

37. It is stated that the perusal of Section 52 (1) of the Act provides that, if the securities premium account is being utilized for purposes apart from what is provided under the provisions of Section 52 (2) & (3) of the Act, as in the present case, the provisions of the Act relating to reduction of share capital would apply as though the securities premium account would form the paid- up capital of the Petitioner Company.

38. It is stated that the utilization of the Securities Premium Account by the Petitioner Company, in the present case, is against the accumulated losses of the Petitioner Company, which is not an illustration or item mentioned under Section 52 (2) & (3) of the Act. I therefore state that in event of such utilization and adjustment, the provisions of reduction of capital would be applicable, and the Securities Premium Account would be treated as part of the paid-up capital of the Petitioner Company. I state that appropriate disclosures and pleadings to such effect have been made in the Company Petition filed before this Tribunal. Therefore the adjustment of the Securities Premium Account against the Accumulated Losses by the Petitioner Company is in compliance with the provisions of Section 52 read with Section 66 of the Act.

39. The Petitioner Company, has not envisaged reduction in the issued, subscribed or paid up share capital of the company. Since the share premium account forms part of the capital in terms of Section 52 of Companies Act, 2013, the utilization of the amount lying in this account is also required to be treated as reduction of capital in terms of Section 66 of Companies Act, 2013.

40. At this juncture, we wish to rely up on the decisions of Hon'ble NCLT Mumbai Bench in the cases of *IDBI Bank Limited in CP.327/MB/2021* and *Vetoquinol India Animal Health Private Limited, CP/265/MB/2021* in which the Tribunal has allowed the Company to adjust the amount lying in the 'Security Premium Account' towards the accumulated losses.

41. In the facts and circumstances of the matter, this Tribunal is of the view that it is 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 and by way of consent in the form of affidavit. It is ordered accordingly. This Tribunal hereby approves the proposed form of Minutes to be registered under section 66 (5) of the Companies Act, 2013 as given in the application as follows:

"The issued, subscribed and paid-up share capital of Pfizer Healthcare India Private Limited is INR 6,92,62,450 (Indian Rupees Six Crores Ninety Two Lakhs Sixty Two Thousand Four Hundred and Fifty only) divided into 69,26,245 (Sixty Nine Lakhs Twenty Six Thousand Two Hundred and Forty Five) shares of INR 10 each have been issued and deemed to be fully paid-up.

The Securities Premium Account of Pfizer Healthcare India Private Limited is henceforth INR 1,008 Crores (Indian Rupees One Thousand and Eight Crores only) as reduced from INR 5,125 Crores (Indian Rupees Five Thousand One Hundred and Twenty Five only)"

42. 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, albeit, in accordance with law, against the persons concerned, directors and officials of the Petitioner.

43. 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 required under any law. Further all compliances as are required to be done by the Petitioner Company upon this order confirming reduction of share capital and security premium reserve shall

be duly complied with in relation SEBI, FEMA and Income Tax laws as may be applicable.

44. This Petition stands **allowed** accordingly.

-Sd-

VENKATARAMAN SUBRAMANIAM
MEMBER (TECHNICAL)

-Sd-

SANJIV JAIN
MEMBER (JUDICIAL)

SriramAnanth.V