



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

ATTENDANCE CUM ORDER SHEET OF THE HEARING
HELD ON **12.03.2026** THROUGH VIDEO CONFERENCING

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

APPLICATION NUMBER :
PETITION NUMBER : CP(CA)/49(CHE)/2024
NAME OF THE PETITIONER(S) : Abtran India Pvt. Ltd.
NAME OF THE RESPONDENT(S) :
UNDER SECTION : Sec 66 of CA, 2013

ORDER

Present: Shri Pwan Jhabakh, Ld. Counsel for the Petitioner.

Vide separate order pronounced in the Open Court, the petition is allowed.

File consigned to records.

Sd/-
[VENKATARAMAN SUBRAMANIAM]
MEMBER (TECHNICAL)

Sd/-
[SANJIV JAIN]
MEMBER (JUDICIAL)

vs

Date: 12.03.2026



**IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH - I, CHENNAI
CP(CA)/49/(CHE)/2024**

*Under Sections 52, 66 and other applicable Provisions of the Companies Act, 2013 and
the NCLT (Procedure for Reduction of Share Capital of Company) Rules, 2016*

*In the matter of **Abtran India Private Limited***

Abtran India Private Limited,

CIN: U74999PY2016FTC008085

Having its Registered Office at "SHAZY", XIII,
366 A, near Hassan Mukku, Pandakkal Mahe,
Pondicherry- 673310.

... Petitioner

Order Pronounced on 12th March, 2026

CORAM

SHRI. SANJIV JAIN, MEMBER (JUDICIAL)

SHRI. VENKATARAMAN SUBRAMANIAM, MEMBER (TECHNICAL)

For Petitioner/ Company : Mr. Pawan Jhabakh

For RD : Mr. Avinash Krishnan Ravi

ORDER

(Heard through Hybrid mode)

1. This Petition has been filed by **Abtran India Private Limited** (hereinafter referred as Petitioner/ Company) under Section 66 and other applicable provisions of the Companies Act, 2013, seeking reliefs as follows:



(1) That the reduction of selective Equity Share Capital of the Petitioner duly approved by the equity shareholders of the Petitioner at an Annual General Meeting thereof held on 27.10.2022 at Mahe be confirmed by this Tribunal so as to be binding on all shareholders and creditors of the Petitioner;

(2) That notices may be ordered to the Regional Director, Ministry of Corporate Affairs and the Registrar of Companies, Pondicherry as per rule 3 (1) (i) of the National Company Law Tribunal (Procedure for reduction of share capital of the Company) Rules, 2016;

(3) That notices may be ordered to all the unsecured 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;

(4) 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 Tamil newspaper having State-Wide circulation;

(5) That to this end all inquiries and directions necessary and proper be made and given;

(6) That the proposed minute be approved by this Tribunal;

(7) That the Petitioner be not required to add the words "and reduced" to its name as the last words thereof; and (8) That this Tribunal may pass such further or other orders as it may deem fit and proper in the facts and circumstances of the case.



2. The main objects of the Petitioner/ Company as set out in the Memorandum of Association of the Company, are briefly reproduced as under;

“i. To carry on the business of providing back office support services, advising, providing consultancy services, outsourcing services for all processes, sub processes, transactions, activities and all other work performed by business in various industries within India and across the world. This includes those process or sub processes that are enabled by information technology.

ii. To carry on the business of providing technical support, managed data center, managed technical center, training center, web support back office, business or financial analysis, scientific analysis, research work and analysis, storage, disaster recovery, accounting, pay roll, inventory management, customer relationship management, enterprises resources planning and to develop software, provide consultancy, software solution and services that are normally offered by the outsourcing business and information technology services providers, and application services providers.”

3. The Petitioner/ Company submits that by virtue of point 4 of X-Alteration of Capital of the Articles of Association of the Company, the Company is enabled to reduce its capital in any manner permitted by law, from time to time by Special Resolution. The article is extracted as under:

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

(i) its share capital;



(ii) any capital redemption reserve account; or

(iii) any share premium account."

4. The Authorized Share Capital of the Petitioner/Company as on 31.03.2022 is INR 7,60,21,000/- (Rupees Seven Crore Sixty Lakh twenty-one thousand only) divided into 76,02,100 (Seventy-six lakh two-thousand and one hundred) Equity Shares of INR 10/- each. The issued, subscribed and paid up capital of the Petitioner/Company as on 31.03.2022 was INR 3,04,08,400/- (Rupees three crore, four lakh eight thousand and four hundred) divided into 30,40,840 (Thirty lakh, forty thousand eight hundred and forty) Equity Shares of INR 10/ each.

5. Brief particulars of the Petitioner/ Company are as follows:

Particulars	Amount in INR
Net worth	1,51,33,808/-
Turnover (Gross Sales)	0
Current Assets	1,54,00,771/-
Non-Current Assets	0
Current Liabilities	2,66,963/-
Long Term Liabilities	0

The financial statements of the Petitioner Company as on 31st March 2021 and 31st March 2022 are placed as **Annexure A2**.



6. The Petitioner/Company states that it has no secured creditors and no unsecured creditors which are in the nature of trade creditors etc. It is stated that there are no adverse qualification or remark or reservations made by the auditor in the financial statements of the Petitioner Company. Further, the Petitioner has no investigation proceedings initiated or pending under the Companies Act 2013 or the Companies Act 1956.

7. The Petitioner Company states that the proposed reduction of capital would not be prejudicial or affect the interests of any creditors, shareholders or any other stakeholders. The Petitioner Company undertakes to settle all liabilities in the normal course of business.

8. The Petitioner/ Company proposes to selectively effect a reduction in its issued, subscribed and paid-up capital to the extent of **INR 2,77,26,360** /- (Rupees Two crores seventy seven lakhs, twenty six thousand, three hundred and sixty only) being **27,72,636** (Twenty seven lakhs seventy two thousand, six hundred and thirty six) equity shares of INR 10/- (Indian Rupees Ten only). Accordingly, the Issued, Subscribed and Paid up Equity Share Capital of the Petitioner of INR **3,04,08,400/-** (Indian Rupees Three crores Four lakhs Eight thousand Four hundred only) being **30,40,840** (Thirty lakhs Forty thousand Eight hundred and forty) equity shares of INR 10/- (Indian Rupees Ten only) each fully paid up would be reduced to INR **26,82,040** (Indian Rupees Twenty six lakhs eighty two Thousand and forty only) being **2,68,204** (Two lakhs sixty eight thousand, two hundred and four only) equity shares of INR 10/ (Indian Rupees Ten only). The amount of share capital proposed to reduced is held by Abtran Group Unlimited, which would stand cancelled and reduced pursuant to the scheme of reduction. On the equity



shares being reduced, the Petitioner/Company shall pay Rs. 4.97/- per equity share from the cash balance to the shareholder (Abtran Group Unlimited).

9. RATIONALE AND PURPOSE OF REDUCTION

It is stated that The accumulated losses of the Company as on 31.03.2022 which amounted to INR. 1,52,74,592 have reduced the net worth of the Company. The carry forward losses on balance sheet are making difficult for the company to raise new resources for expansion and modernization. The capital reduction is to re-align the relation between capital and assets which would enable the company to carry out business activities or revamp the current business model. The proposed Scheme would enable the company to show the actual financial position in its balance sheet to depict the value of assets. The Board of Directors, in furtherance of the proposed scheme resolved as under in the meeting held on 25.10.2022:

“RESOLVED THAT pursuant to 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 other applicable provisions, if any, of the Companies Act, 2013 and in accordance with the Memorandum of Association of the Company and Article X (4) of the Articles of Association of Abtran India Private Limited (‘the Company’) and subject to the confirmation of National Company Law Tribunal, Chennai and any other approvals, permissions and sanctions as may be required from the appropriate authorities, consent of the Shareholders be and is hereby accorded to reduce the Issued, Subscribed and Paid-up equity share capital of the Company from INR 3,04,08,400/- divided into 30,40,840 number of equity shares



of INR 10 each to INR 26,82,040 divided into 2,68,204 number of equity shares of INR 10 each.

“RESOLVED FURTHER THAT the aforesaid reduction of paid-up equity share capital shall be effected by returning to the equity shareholders, by way of cash, an amount of INR 1,37,80,000 (INR 4.97 per share for 27,72,636 equity shares) and utilizing the difference between the face value of equity shares and the abovementioned amount paid to the equity shareholders amounting to INR.1,39,46,360/- for writing off accumulated losses of the Company”

“RESOLVED FURTHER THAT subject to the approval of the National Company Law Tribunal, Chennai, the equity shares of INR 2, 77,26,360 being 27,72,636 equity shares of INR 10/- held by Abtran Group Unlimited so reduced, shall stand cancelled, extinguished and rendered invalid, without any further act or deed by the shareholders of the Company”

Copy of the extract of the resolution passed by the Board of Directors is placed as **Annexure A3.**

10. It is stated that following the Board’s resolution, the proposed scheme of reduction was placed in the Extra-ordinary General Meeting held on 27.10.2022, where the proposed scheme of reduction through “Special Resolution” was approved by the equity shareholders. The relevant extract of the resolution is as under:

“RESOLVED THAT pursuant to 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 other applicable provisions, if any, of the Companies



Act, 2013 and in accordance with the Memorandum of Association of the Company and Article X (4) of the Articles of Association of Abtran India Private Limited ('the Company') and subject to the confirmation of National Company Law Tribunal, Chennai and any other approvals, permissions and sanctions as may be required from the appropriate authorities, consent of the Shareholders be and is hereby accorded to reduce the Issued, Subscribed and Paidup equity share capital of the Company from INR 3,04,08,400/- divided into 30,40,840 number of equity shares of INR 10 each to INR 26,82,040/- divided into 2,68,204 number of equity shares of INR 10 each"

"RESOLVED FURTHER THAT the aforesaid reduction of paid-up equity share capital shall be effected by returning to the equity shareholders, by way of cash, an amount of INR 1,37,80,000 (INR 4.97 per share for 27,72,636 equity shares) and utilizing the difference between the face value of equity shares and the abovementioned amount paid to the equity shareholders amounting to INR.1,39,46,360/- for writing off accumulated losses of the Company"

"RESOLVED FURTHER THAT subject to the approval of the National Company Law Tribunal, Chennai, the equity shares of INR 2, 77,26,360 being 27,72,636 equity shares of INR 10/- held by Abtran Group Unlimited so reduced, shall stand cancelled, extinguished and rendered invalid, without any further act or deed by the shareholders of the Company"

Copy of the extract of the resolution passed at the Extra-ordinary General Meeting of the Petitioner/ Company is placed as **Annexure A4**.



11. The Petitioner/Company has submitted the following shareholding pattern of the company pre and post reduction of the share capital:

• **Shareholding Prior to the Reduction of Capital:**

<u>S. No.</u>	<u>Name of Shareholder</u>	<u>Number of Shares</u>	<u>Percentage</u>
1	Holding Company - Abtran Unlimited Blackrock Business Park, Bessboro Road, Blackrock, Cork, T12N972, Ireland	1	0.01
2	Ultimate Holding Company - Abtran Group Unlimited Unit 4, Technology Centre, Curra Heen Road, Bishops Town Co. Cork – Ireland	30,40,839	99.99

• **Shareholding Post the Reduction of Capital:**

<u>S. No.</u>	<u>Name of Shareholder</u>	<u>Number of Shares</u>	<u>Percentage</u>
1	Holding company - Abtran Unlimited	1	0.01
2	Ultimate holding company - Abtran Group Unlimited	2,68,203	99.99

12. It is stated that the proposed reduction of Equity Share Capital does not involve the diminution of any liability in respect of unpaid Capital, rather, it would entail payment to the shareholders of Paid-up Equity Capital. The Petitioner/ Company states that it has sufficient assets including cash and bank balances. The Petitioner/ Company has filed the petition seeking confirmation from this Tribunal to pay the shareholders from the 'cash and cash equivalents' of the company.



13. The declaration made by the directors of the Company stating that there are no creditors to the Company along with the certificate from the statutory auditor certifying that the petitioner/company has no creditors is placed as **Annexure A6 and A7**.

14. It is stated that the Company has not accepted any deposits and that there are no arrears of repayment of deposits or any interest therein. The declaration by the Director of the Petitioner/Company and a certificate from the statutory auditor stating and confirming that the company has not accepted any deposits and that there are no arrears of repayment of deposits or any interest thereon is marked and annexed as **Annexure A9**.

15. The statutory auditors have certified that the proposed reduction of share capital is in accordance with the accounting standards specified under section 133 or any other provisions of the Companies Act 2013. The certificate to this effect is placed as **Annexure A10**.

16. The Petitioner/Company was directed by this Tribunal vide order dated 28.08.2024 to give notice of the petition to the Central Government, Regional Director, the Registrar of Companies, Income Tax, and Reserve Bank of India having jurisdiction on the Petitioner. Following the order, the Petitioner/ Company filed an Affidavit of Service on 27.11.2024. Notices were also published in **Business Standard**(English) and in **Dinamalar** (Tamil) as directed.

17. This Tribunal vide order dated 19.11.2025, directed the Petitioner/ Company to file latest Audited Financial Statements for the Financial Year ended on 31.03.2025. The Petitioner/ Company complied and filed the latest Audited



Financial Statements on 02.12.2025. The brief particulars of the Company as per the latest Financial Statement are as follows:

Particulars	INR(in 00's)
Net worth	1,39,164/-
Turnover	-
Current Assets	1,38,806/-
Non-Current Assets	358/-
Current Liabilities	384/-
Non-Current Liabilities	-

The accumulated loss amounted to INR. 1,64,920/-.

18. REPORT FILED BY THE REGIONAL DIRECTOR

18.1 The Regional Director in his report filed on 21.11.2024, made remarks regarding failure to cause publication in newspapers as directed by this Tribunal.

18.1.1 The Petitioner/ Company filed with this Tribunal an affidavit to this effect satisfying the directions to cause paper publications.

18.2 The Regional Director stated that the Petitioner/ Company may be directed to undertake necessary FEMA compliances as the shareholders of the petitioner/company are foreign body corporates and the reduced capital is to be repatriated to the foreign body corporates.

18.2.1 The Petitioner/ Company filed a memo on 03.12.2024, wherein it has no objections to the submissions of the Regional Director.



19. This Tribunal vide order dated 22.07.2025, directed the Petitioner/ Company to clarify how the shareholders would be refunded the amount under Section 66, when the accumulated losses are continuing in the Company's account.

20. CLARIFICATION FILED BY THE PETITIONER/ COMPANY

20.1 It is stated that the financial statements demonstrate that while the Petitioner Company incurred a loss of Rs.14,43,251/- for the financial year ending on 31st March 2023 (as indicated in Page No. 4 - Balance Sheet and Page No. 9 - Note No. 4 of the Additional Typed Set of Documents filed by the Petitioner Company), it has earned a profit of Rs. 1,91,083/- for the financial year ending on 31st March 2024 (as indicated in Page No. 17 - Balance Sheet in the Additional Typed Set of Documents filed by the Petitioner Company), thereby resulting in a reduction of the accumulated losses from Rs. 1,67,17.843/- to Rs.1,65,26,760/ reflecting the Company's prudent financial management. As evidenced by the Audited Financial Statements for the year ended 31st March 2024, the Company holds sufficient cash reserves, with a cash balance of Rs.1,39,20,010/-, indicating its ability to implement the Scheme without financial strain.

20.2 It is submitted that the proposed Scheme contemplates a total capital reduction of Rs.2,77,26,360/-. Out of this amount, Rs. 1,39,46,360/- shall be utilized to write off accumulated losses, and the balance of Rs.1,37,80,000/- shall be distributed to the shareholders by way of repayment of capital. It is submitted that the proposed capital reduction, including the adjustment of accumulated losses, is an accounting treatment and does not adversely impact the Company's liquidity.



21. To clarify the position of law on the question, **“Whether a shareholder can be paid by the reduction of share capital, if the Company is having accumulated losses?”**, the counsel for the Petitioner/ Company relied on the decisions rendered in

(i). *Haryana Malleable and Alloy Castings Limited. (CP No. 73/Chd/J & K/2018)*. The relevant extract is as under:

“22. The Registrar of Companies, Jammu & Kashmir in its report has submitted that the petitioner company is a loss making company. The company has incurred net loss of Rs.1,66,96,170.30 and Rs. 81,89,918.64 for the financial years 2015-16 & 2016-17 respectively.

*24. The present position of law, while dealing with the provisions of Section 66 is that if none of the shareholders are objecting for the proposed reduction, then after considering the merits of the case as also connected facts and circumstances such petition generally deserves to be admitted. In the case of **Elpro International Limited (Company Petition No. 288 of 2007) order dated 22.06.2007 reported in MANU/MH/1414/2007 : [2009]149CompCas646(Bom)**, Hon’ble Bombay High Court has expressed that the question of reduction of share capital is the matter of domestic concern. Further observed that decision for reduction is based on commercial consideration undertaken by the businessmen who are in the best position to know of the necessities and interests of the company concerned, in the absence of serious allegations as regards the bona fides of the proposed Scheme, the Courts are of the view that no interference in such decisions are acquired. It*



has also been observed that considering the commercial aspect of the decision it is not permissible for the Court to come to the conclusion that the exit opportunity offered is inequitable and unjust.

*Likewise, in the case of **Reckitt Benckiser (India) Ltd. (Company Petition No. 206 of 2004)** Order dated 31.05.2005 reported in 2005 SCC Online Del 674, after due consideration of the pre and post reduction, admittedly selective one, it was held that if majority by a special resolution decides to reduce share capital of company, it has also right to decide as to how this reduction should be carried into effect. Further, observed that while reducing the share capital, company can decide to extinguish some of its shares without dealing in the same manner as with all other shares of the same class. The company limited by shares is permitted to reduce the share capital in any manner, thereby a selective reduction is permissible within the framework of law. On the question of valuation as well, an observation was that valuation of shares is a technical matter, which requires considerable skill and experience. If the stakeholders are satisfied with the value, can approve the transaction of reduction of share capital which should not deemed to be inequitable or unfair transaction."*

(ii). NGP Advisors India Private Limited. (CP No. 126/Chd/Hry/2018). The relevant extract is as under:

19. The Registrar of Companies, NCT of Delhi & Haryana vide Diary No. 1772 dated 03.12.2018 in its report has submitted that the petitioner company is a loss-making company. The company has incurred loss of '32,39,851 for the financial year 2016-17. It has also been submitted that



there is no complaint received against the petitioner company and no proceeding is pending against the company. It is stated that Form RSC 2 in eform GNL-1 is not submitted and since the consideration will be paid to foreign entity, the Petitioner Company may be directed to comply with applicable FEMA provisions, if any. We may add that the ROC's report is made part of RD's report submitted vide Diary No. 5010 dated 19.12.2018.....

*22.....In the case of **Elpro International Limited (Company Petition No. 288 of 2007)** order dated 22.06.2007 reported in **MANU/MH/1414/2007 : [2009]149CompCas646(Bom)**, Hon'ble Bombay High Court has expressed that the question of reduction of share capital is the matter of domestic concern. Further observed that decision for reduction is based on commercial consideration undertaken by the businessmen who are in the best position to know of the necessities and interests of the company concerned, in the absence of serious allegations as regards the bona fides of the proposed Scheme, the Courts are of the view that no interference in such decisions are acquired. It has also been observed that considering the commercial aspect of the decision it is not permissible for the Court to come to the conclusion that the exit opportunity offered is inequitable and unjust.*

*Likewise, in the case of **Reckitt Benckiser (India) Ltd. (Company Petition No. 206 of 2004)** Order dated 31.05.2005 reported in 2005 SCC Online Del 674, after due consideration of the pre and post reduction, admittedly selective one, it was held that if majority by a special resolution decides to reduce share capital of company, it has also right to decide as to*



how this reduction should be carried into effect. Further, observed that while reducing the share capital, company can decide to extinguish some of its shares without dealing in the same manner as with all other shares of the same class. The company limited by shares is permitted to reduce the share capital in any manner, thereby a selective reduction is permissible within the framework of law. On the question of valuation as well, an observation was that valuation of shares is a technical matter, which requires considerable skill and experience. If the stakeholders are satisfied with the value, can approve the transaction of reduction of share capital which should not be deemed to be inequitable or unfair transaction.”

(iii). *Bauli Bakes & Sweets Consulting Private Limited. (Company Petition No. 14 of 2022).* The relevant extract is as under:

13. The Central Government through the Regional Director, Eastern Region, Ministry of Corporate Affairs, Kolkata has made representation by an affidavit affirmed on 28.07.2022 to which the petitioner has replied by a rejoinder dated 21.09.2022. The observations of the RD and responses of the Petitioner are summarized as under:-

(I) Paragraph 2(C) of the RD Affidavit:

As per Financial Statement as at 31/03/2021, which is immediate preceding financial statement before the date on which the applicant Company resolved to reduction of share capital, the accumulated loss was Rs 45,31,043/- only whereas the Applicant Company proposed to reduction of share capital is Rs 2,35,00,000/-. Therefore, no apparent justification regarding such reduction of share capital as there is huge difference between the amount of accumulated



losses as on 31.03.2021 i.e. Rs 45,31,043/- and the amount of reduction of share capital Rs. 2,35,00,000/-

(II) Paragraph 2(d) of the RD Affidavit:

That the Scheme is cryptic and ambiguous, nothing is stated with clarity regarding what is the quantum of cash to be paid to shareholders, whether after adjusting accumulated losses or without adjusting accumulated losses.

Paragraph 2(iii) of the Rejoinder:

With reference to Paragraph 2 (d) of the said affidavit, the Scheme is not cryptic and ambiguous because it is clearly stated in clause no, 3.1, 3.2 and 7.1 of the Scheme that Rs. 2,35,00,000 (proposed reduction of share capital) will be paid by reducing the paid up capital of the Company to the shareholders on proportionate basis out of the net worth of the company from the Bank and also there is no diminution of liabilities as per clause 3.2 of the scheme. Entire amount of Net worth is kept in Bank Account of the Applicant Company. Further in clause 5.1 read with clause 3.1 of the Scheme, it is clearly stated that the said reduction of capital will be refunded from the Bank Account of the company. So there seems to be full clarity in regard to the adjustment as stated in the above clauses.

(iv). Delvit Solutions Private Limited. (C.P No. 62/BB/2021). The relevant extract is as under:

"16.....

Para 7: that "The company is continuously making losses with a meagre turnover. An income of Rs. 2.07 Cr And Rs. 3.71 Cr was shown in the year 2020-21 and 2019-2020 respectively. The net assets of the company as at



31/03/2021 shown in the financial statement, is just Rs. 48.52 lakhs. However, in order to facilitate and take out the money by the shareholders, the company has disposed off the entire assets in the year 2020-21 for an astonishing amount of Rs. 107.60 Crs by naming 'Intellectual Property Sale'. The company never accounted any amount in the financial statement as Intellectual Property as Intangible Assets. In the financial statement as at 31/03/2021, it was stated that the company did not have any plan to wind up, in the immediate future and will do e-commerce support to other entities. First of all the company need to explain how an asset worth Rs. 48 lakhs could be sold at Rs. 107.60 Crs., that too when the company is a continuous loss making with negative net worth. Immediately after closure of the financial year 2020-21 the company has also gone for buy back shares. An amount of Rs. 17.65 Crs had been taken out from the company by shareholders by utilizing General reserve/surplus of profit and loss account arising out of so called Sale of Intellectual Property/Assets for an amount of Rs. 107.60 Cr. In short, the company is going to be a shell company within a short period of time and going concern itself is doubtful".

17.....

1 . In the case of *Miheer H. Mafatlal v. Mafatlal Industries Ltd.* [MANU/SC/2143/1996 : 10 SCL 70 (SC)], the Hon'ble Supreme Court held that: "However, further question remains whether the Court has jurisdiction like an appellate authority to minutely scrutinise the Scheme and to arrive at an independent conclusion whether the Scheme should be permitted to go through or not when the majority of the creditors or members or their



respective classes have approved the Scheme as required by section 391(2). On this aspect the nature of compromise or arrangement between the company and the creditors and members has to be kept in view. It is the commercial wisdom of the parties to the Scheme who have taken an informed decision about the usefulness and propriety of the Scheme by supporting it by the requisite majority vote that has to be kept in view by the Court. The Court certainly would not act as a Court of Appeal and sit in judgment over the informed view of the concerned parties to the compromise as the same would be in the realm of corporate and commercial wisdom of the concerned parties. The court has neither the expertise nor jurisdiction to delve deep into the commercial wisdom exercised by the creditors and members of the company who have ratified the Scheme by the requisite majority. Consequently, the Company Court's jurisdiction to that extent is peripheral and supervisory and not appellate. The Court cannot undertake the exercise of scrutinising the Scheme placed for its sanction with a view to finding out whether a better Scheme could have been adopted by the parties. This exercise remains only for the parties and is in the realm of commercial democracy permeating the activities of the concerned creditors and members of the company who in their best commercial and economic interest by majority agree to give green signal to such compromise or arrangement.

2. In Reckitt Benckiser (India) Ltd. (CP 206 of 2004) the Hon'ble Delhi High Court held that:

"(i) The question of reduction of share capital is treated as matter of domestic concern, i.e. it is the decision of the majority which prevails.



(ii) *If majority by special resolution decides to reduce share capital of the Company, it has also the right to decide as to how this reduction should be carried into effect....”*

24..... The present position of law, while dealing with provisions of Section 66 is that if none of the shareholders are objecting for the proposed reduction, then after considering the merits of the case as also connected facts and circumstances such petition generally deserves to be admitted. Some of the case laws are discussed below:

i) *In the case of **Elpro International Limited** (Company Petition No. 288 of 2007) order dated 22.06.2007 reported in MANU/MH/1414/2007 : (2009) 149 Comp Cas 646 (Bom), Hon'ble Bombay High Court has expressed that the question of reduction of share capital is the matter of domestic concern. Further observed that decision for reduction is based on commercial consideration undertaken by the businessmen who are in the best position to know of the necessities and interest of the company concerned, in the absence of serious allegations as regards the bona fides of the proposed scheme, the courts are of the view that no interference in such decisions is required.”*

(v). **Paytm E-Commerce Private Limited. (Company Petition No. 100/ND/2022).**

This decision followed the ratio of the above-mentioned matters.

22. We have heard the learned counsel for the Petitioner and perused the relevant citations placed before us. The position of law regarding a loss making company paying off to the shareholders, while undergoing a reduction of share capital has been answered in whole and to the satisfaction of this Tribunal. The Benches of NCLT have held that the decision to reduce share capital of the



company, is wholly a decision that rests with the commercial wisdom of the shareholders of the company and profoundly a “Domestic decision.” The powers vested with this Tribunal are diluted to be peripheral and supervisory, and this Tribunal cannot exercise the power of scrutinising the Scheme placed for sanction, with a view to finding out whether a better Scheme could have been adopted by the parties. There are no serious allegations as regards the bona fides of the proposed scheme. It has been settled that there is no bar in law, for a loss making company to pay off shareholders, while undergoing a reduction in the share capital of the company. In the present case, the Petitioner/ Company has proposed a scheme of reduction, whereby provisions have been made to both pay off the equity shareholders and also to write off accumulated losses of the Company. The proposed scheme has been approved by a “Special Resolution.” The proposition espouses to use the difference of the face value and the value being paid to shareholders, in writing off the accumulated losses of the Petitioner/ Company. The Petitioner/ Company has undertaken to comply as per FEMA guidelines for the repatriation of the reduced share capital to the shareholder of the Company.

23. The Petitioner/ Company as evidenced by the latest audited Financial Statements, has earned a profit of Rs. 1,91,083/- for the financial year ending on 31st March 2024 and faced miniscule loss of Rs. 1000/- for the financial year ending on 31st March 2025. The proposed scheme of reduction as resolved by the shareholders of the Petitioner/ Company is neither barred by law nor inconsistent with procedural requirements under Section 66.

24. The present position of law, while dealing with provisions of Section 66 is that, if none of the shareholders are objecting for the proposed reduction, then after



considering the merits of the case and also connected facts and circumstances, such petition generally deserves to be admitted. Hence, in facts and circumstances of this matter, this Tribunal is of the view that it is just and proper to confirm the reduction of share capital of the Company as resolved by the members of the Company by passing a special resolution 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 petition as follows:

"The Capital of Abtran India Private Limited, is henceforth INR 26,82,040 / divided into 2,68,204 Equity Shares of INR 10/- each, reduced from INR 3,04,08,400/- divided into 30,40,840 Equity Shares of INR 10/- each. At the date of this registration 2,68,204 Equity Shares of INR 10/- (Indian Rupees Ten only) each have been issued and are deemed to be fully fit."

25. 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.

26. 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.

27. Accordingly, **CP(CA)/49/(CHE)/2024** stands **allowed**.

28. File be consigned to records.

-Sd-

VENKATARAMAN SUBRAMANIAM
MEMBER (TECHNICAL)

-Sd-

SANJIV JAIN
MEMBER (JUDICIAL)