IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT – 1, AHMEDABAD

ITEM No.303
CP/21(AHM)2025

Under Section 55 of CA 2013

IN THE MATTER OF:

Electrotherm (India) Limited ....**Applicant**

........**Respondent**

Order delivered on: 21/07/2026

C O R A M:

MR. SHAMMI KHAN, HON'BLE MEMBER (J)
MR. SANJEEV SHARMA, HON'BLE MEMBER (T)

O R D E R
(Hybrid Mode)

The case is fixed for pronouncement of order. The order is pronounced in the open court, vide separate sheet.

-Sd-

SANJEEV SHARMA
MEMBER (TECHNICAL)

-Sd-

SHAMMI KHAN
MEMBER (JUDICIAL)

IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT-I, AHMEDABAD

Company Petition No.21/(AHM)/2025

(A Company Petition filed under Section 55(3) of the Companies Act, 2013)

<u>MEMO OF PARTIES</u>

M/s. Electrotherm (India) Limited,
(CIN: L29249GJ1986PLC009126)
Having its Registered Office at:
A-1, Skylark Apartment, Satellite Road,
Satellite, Ahmedabad – 380 015,
Gujarat, India.

.... Petitioner

Order Pronounced On: 21.07.2026

<u>C O R A M:</u>

SH. SHAMMI KHAN, HON'BLE MEMBER (JUDICIAL)
SH. SANJEEV SHARMA, HON'BLE MEMBER (TECHNICAL)

<u>A P P E A R A N C E S:</u>

For the Applicant : Mr. Jaimin Dave, Ld. Advocate
a.w. Ms. Hirva Dave, Ld. Advocate
For the RD (C.Govt.) : Mr. Ankit Shah, Ld. Advocate
For the SEBI : Mr. Nikunat Raval, Ld. Advocate

<u>O R D E R</u>
(Per Bench)

1. The present petition has been filed on 12.03.2025 vide inward diary No. E-0705 affirmed by the Applicant, Mr. Shailesh Bhandari, the Executive Vice Chairman and authorized signatory of M/s. Electrotherm (India) Limited, under Section 55(3) of the Companies Act, 2013, seeking following prayers: -

> *"A. This Hon'ble Tribunal be pleased to grant a sanction to issue and allot 1,20,00,000 redeemable preference shares of Rs. 10/- (Rupees Ten Only) each to the aforementioned 6 (six) existing Preference Shareholders, of the value equivalent to the value of unredeemed Preference Shares on the same terms and conditions and redeemable not earlier than 2 years, but not later than 20 years from the date of issue/ allotment of such further Redeemable Preference Shares;*
>
> *B. This Hon'ble Tribunal may further be pleased to hold that on issue of such further Redeemable Preference Shares, original and existing unredeemed Preference Shares shall be deemed to have been redeemed;*
>
> *C. This Hon'ble Tribunal may further be pleased to declare that the issue of further Redeemable Preference Shares under this section shall not be deemed to be an increase or, as the case may be, a reduction, in the share capital of the Petitioner Company; and*

D. This Hon'ble Tribunal may be pleased to grant any other and further relief(s) deemed just and proper, in the interest of justice."

2. The brief facts as submitted are narrated as under: -

2.1 The Petitioner Company, M/s. Electrotherm (India) Limited, is a public limited company incorporated on 29.10.1986 under the provisions of the Companies Act, 1956, originally incorporated in the name of M/s. Foremost Chemicals Limited. The name was subsequently changed to Electrotherm (India) Limited on 31.03.1994, and a fresh certificate of incorporation was issued by the Registrar of Companies, Gujarat, Ahmedabad. The registered office of the Petitioner Company is situated at A-1, Skylark Apartment, Satellite Road, Satellite, Ahmedabad – 380 015, Gujarat, within the jurisdiction of this Bench.

2.2 As submitted, the equity shares of the Petitioner Company are listed on BSE Limited and National Stock Exchange of India Limited. The Company is engaged in diversified businesses including engineering and technologies for steel and foundry industries, transformer manufacturing, steel making, ductile iron pipe manufacturing, and battery-operated vehicles.

2.3 The authorised and paid-up share capital of the Company as on 31.03.2024 was as under:

Particulars (Authorised Share Capital)	Amount (Rs. in Crores)
2,50,00,000 Equity Shares of Rs.10/- each	25.00
2,50,00,000 6% Non-Cumulative Redeemable Preference Shares of Rs.10/- each	25.00
2,85,90,000 Partially Convertible/Partially Redeemable Preference Shares of Rs.10/- each	28.59
Total	78.59

2.4 The issued, subscribed and paid-up share capital is as under:

Particulars (Paid-up Share Capital)	Amount (Rs. in Crores)
1,27,42,814 Equity Shares of Rs.10/- each	12.74
1,20,00,000 6% Non-Cumulative Redeemable Preference Shares of Rs.10/- each	12.00
Total	**24.74**

2.5 It is stated that there has been no change in the authorised, issued, subscribed and paid-up share capital of the Petitioner Company after the aforesaid date. It is further stated that approximately 20.90% of the Equity Share Capital is held by the Promotors and Promoters Group in the petitioner company.

2.6 As submitted, for the year ending 31.03.2024, the Company recorded revenue of Rs.4,271.50 crores and net profit of Rs.319.43 crores during the F.Y.

2023-24. Despite this, accumulated losses stood at Rs.1,424.06 crores, with Other Equity/Reserves & Surplus at negative Rs.893.37 crores (comprising Securities Premium Rs.240.01 crores, General Reserves Rs.290.68 crores, and Retained Earnings negative Rs.1,424.06 crores). The audited financials thus show operational profitability but continuing historical losses affecting redemption capacity. The Petitioner placed on record the copy of audited financial statements as on 31.03.2024 as Annexure-B to the instant petition.

2.7 It is stated that the Petitioner Company convened an Extra-Ordinary General Meeting ("EOGM" on **24.12.2004** wherein a special resolution was passed authorising issuance of 6% **Non-Cumulative Redeemable Preference Shares (hereinafter as "NCRPS")** of Rs.10 each, not exceeding Rs.10,00,00,000 (Rs. Ten Crores), to meet working capital requirements. The terms provided that such NCRPS would be redeemable not earlier than 10 years and not later than 20 years, on six months' notice, out of profits, proceeds of a fresh issue, or other lawfully available funds, and redeemable at par. Pursuant thereto, the Company allotted NCRPS aggregating to 80,00,000 shares in March and April 2005 to various corporate entities, as detailed in the returns of allotment filed with the Registrar of Companies.

2.8 As stated, the Petitioner Company allotted the 6% NCRPS at Rs.10/-

On 11.03.2005:

Sr. No.	Name of Allottee	No. of NCRPS
1	M/s. Lavish Packagers Limited	13,60,000
2	M/s. Web Businesses.com Global Limited	22,00,000
Total		35,60,000

On 01.04.2005:

Sr. No.	Name of Allottee	No. of NCRPS
1	M/s. Highland Finances & Investments Private Limited	32,40,000
2	M/s. Froid Finance and Investments Private Limited	12,00,000
Total		44,40,000

2.9 On 29.03.2005, another special resolution was passed by the company, authorising issuance of NCRPS not exceeding Rs.15 crores. The allotments were made on 14.05.2005 aggregating to 40,00,000 NCRPS.

Sr. No.	Name of Allottee	No. of NCRPS
1	M/s. Lavish Packagers Limited	12,20,000
2	M/s. Web Businesses.com Global Limited	5,30,000
3	M/s. Ahmedabad Aviation and	10,50,000

	Aeronautics Limited	
4	Mr. Shailesh B. Bhandari	12,00,000
Total		**40,00,000**

2.10 It is stated that subsequent to the above allotments, and upon receipt of written consents from all six NCRPS holders, the Board of Directors of the Petitioner Company, in its meeting held on 30.04.2006, resolved to vary the redemption terms of the preference shares. By substituting the period of "2 years" in place of "10 years," the NCRPS were made redeemable not earlier than 2 years and not later than 20 years from the date of issue. The said variation was duly approved under Sections 106 and 107 of the Companies Act, 1956, and supported by consent letters of all preference shareholders, copies of which along with the Board Resolution dated 30.04.2006 are placed on record as Annexure-E Collectively.

2.11 As submitted, the Petitioner Company had duly paid dividend on the said 6% NCRPS till the financial year 2009-2010. It is further stated that in order to conserve the financial resources in the F.Y. 2010-11 and thereafter, the Petitioner Company did not pay/declare any dividend on the said 6% NCRPS on account of non-availability of profits. The Petitioner has submitted the tabulated details as under:

Sr. No.	Financial Year	Dividend Paid (Rs. in Lacs)
1	2004-05 (proportionate for 21 days)	Rs.1.23
2	2005-06 (on 40,00,000 NCRPS proportionate for 321 days)	Rs.69.11
3	2006-07	Rs.72.00
4	2007-08	Rs.72.00
5	2008-09	Rs.72.00
6	2009-10	Rs.72.00

2.12 As stated, it is of material relevance that the 20-year redemption period of the 6% NCRPS will expire in March, April and May 2025. Accordingly, the following preference shares fall due for redemption:

- 35,60,000 NCRPS on or before 10.03.2025
- 44,40,000 NCRPS on or before 31.03.2025
- 40,00,000 NCRPS on or before 13.05.2025

Thus, an aggregate of 1,20,00,000 NCRPS of Rs.10/- each, issued in 2005, are due for redemption within the said period.

2.13 As per proviso (a) to Section 55(2) of the Companies Act, 2013, preference shares can be redeemed only out of (i) profits available for dividend, or (ii) proceeds of a fresh issue of shares made for the purpose of redemption.

2.14 Further, under the fourth proviso to Section 123(1) of the Companies Act, 2013, no dividend can be declared unless carried-forward losses and depreciation of previous years are first set off against the current year's profits.

2.15 It is submitted in view of the above statutory provisions, and considering the accumulated losses of Rs.1,424.06 crores as on 31.03.2024, the Petitioner Company is not in a position to redeem the preference shares due in March, April and May 2025. Accordingly, it seeks approval of this Hon'ble Tribunal under the proviso to Section 55(3) to issue further redeemable preference shares equal to the amount due, so that the existing unredeemed shares may be deemed redeemed.

2.16 It is further submitted that, subsequent to the approval of this Bench, the proposed issue of 6% NCRPS will be made under Section 55(3) of the Companies Act, 2013 to related parties of the Petitioner Company, namely: (i) Mr. Shailesh B. Bhandari, Executive Vice Chairman of the Company, and (ii) M/s. Ahmedabad Aviation and Aeronautics Limited, in which Mr. Shailesh Bhandari holds 12.77% equity shares. In view of the related-party nature of the transaction, approval of the Audit Committee was required under Section 177 of the Companies Act, 2013 and Regulation 23 of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015.

2.17 It is further stated that the Petitioner Company approached the Audit Committee, which, after due consideration granted its approval in accordance with law prior to filing of the present petition. A copy of the Audit Committee's approval has been placed on record as Annexure-F.

2.18 As stated, pursuant to the statutory requirements of Section 55(3) of the Companies Act, 2013 and in continuation of the Audit Committee's approval, the Board of Directors of the Petitioner Company, at its meeting held on 11.02.2025, passed a board resolution (placed as Annexure-G) authorising the issue and allotment of further 1,20,00,000 Non-Cumulative Redeemable Preference Shares of Rs.10 each to the existing six preference shareholders. The proposed issue is equivalent in value to the unredeemed NCRPS due for redemption in March, April and May 2025, and is to be made on the same terms and conditions as the original issue. The details of the proposed allotment are as under:

Sr. No.	Name of Shareholder	No. of NCRPS held	Proposed Allotment (Rs.10/- each)
1	Web Businesses.com Global Limited	27,30,000	27,30,000
2	Lavish Packagers Limited	25,80,000	25,80,000

3	Froid Finance and Investments Pvt. Ltd.	12,00,000	12,00,000
4	Highland Finances & Investments Pvt. Ltd.	32,40,000	32,40,000
5	Ahmedabad Aviation and Aeronautics Limited	10,50,000	10,50,000
6	Mr. Shailesh B. Bhandari	12,00,000	12,00,000
	Total	**1,20,00,000**	**1,20,00,000**

2.19 In compliance with Section 55(3) of the Companies Act, 2013, the Petitioner Company has obtained the written consents of five (05) out of six (06) preference shareholders, affirming their agreement to accept issuance of further redeemable preference shares in lieu of redemption of the existing NCRPS. These consents have been furnished on affidavit and placed on record before this Bench.

2.20 To substantiate compliance, the Petitioner has also produced a certificate issued by a Practicing Company Secretary confirming that the requisite majority (05 out of 06) of preference shareholders have duly consented to the proposed arrangement. Copies of the affidavits of consent and the certificate of the Practicing Company Secretary are placed as Annexure-I.

2.21 This evidences that the preference shareholders, representing the overwhelming majority of the NCRPS, have voluntarily agreed to the proposed issuance, thereby ensuring that their rights are preserved without any prejudice to equity shareholders or creditors.

2.22 In Para-5 of the Petition, the Petitioner submitted that the proposed issue of further redeemable preference shares under Section 55(3) of the Companies Act, 2013 is a lawful and necessary measure. It is emphasised that the arrangement does not involve any cash outflow and the proposal does not amount to reduction of capital in any manner whatsoever. The equity shareholders shall retain their existing rights without dilution, and creditors are not prejudiced as no funds are diverted from repayment obligations.

3. The Registrar of Companies, Gujarat, Dadra & Nagar Haveli, has filed a report on 16.06.2025 vide inward no. R-247 through Ms. Rupa Sutar, Deputy Registrar of Companies. The brief of the report is recorded as under: -

3.1 It is stated in the report that the Petitioner Company, M/s. Electrotherm (India) Limited, was incorporated on 29.10.1986 and presently maintains its registered office at A-1, Skylark Apartment, Satellite Road, Satellite, Ahmedabad – 380015, Gujarat. The Company is active and its CIN is L29249GJ1986PLC009126.

3.2 The Registrar of Companies ("RoC") has confirmed that the authorised capital of the Company is Rs.78.59 crores and that the Company has 23 active charges registered against it, aggregating to Rs.4,819.29 crores. The Company has filed its annual returns and balance sheets regularly, including the latest filings for the financial year ending 31.03.2024.

3.3 The report further sets out the list of directors as per the master data, including Mr. Shailesh Bhandari (Managing Director since 29.03.2007), Mr. Suraj Bhandari (Managing Director since 13.11.2019), and other directors and key managerial personnel, tabulated as under:

Sr. No.	DIN No.	Name	Designation	Date of Appointment	Date of Cessation	Signatory
1	938666	Nivedita Ravindra Sarda	Director	25.05.2018	–	Yes
2	58866	Shailesh Bhanwarlal Bhandari	Managing Director	29.03.2007	–	Yes
3	7909551	Dinesh Shankar Mukati	Director	05.09.2017	–	Yes
4	7296523	Suraj Shailesh Bhandari	Managing Director	13.11.2019	–	Yes
5	3536047	Mohan Pratap	Director	05.09.2017	–	Yes

6	6745225	Tushar Kantilal Jani	Additional Director	10.04.2025	–	Yes
7	*****5251J	Amit Patwarika	CFO	11.02.2025	–	Yes
8	*****9976F	Harish Mukati	CEO	14.11.2024	–	Yes
9	*****6825B	Fageshkumar Rameshbhai Soni	Company Secretary	08.02.2024	–	Yes

3.4 It is stated that, as per records, no complaints, compounding matters, or other proceedings are pending against the Company before the RoC. However, the Enforcement Module reflects that the Company is under investigation vide SRN I00065236.

3.5 The Dy. RoC, in its Para-8, has disclosed that certain prosecutions are pending against the Company before the Hon'ble Additional Chief Judicial Magistrate, Ahmedabad, and the Hon'ble Principal District and Sessions Court, Ahmedabad. These include prosecutions under Sections 448, 129(7), 128(6), and 147 of the Companies Act, 2013, relating to contraventions of provisions on financial statements, accounts, and audit.

Sr. No.	**Section of Companies Act, 2013**	**Nature of Contravention / Complaint**	**Case No.**

1	Section 448	Complaint under Section 448 (false statements) – Para 21 of IR	SPCS No. 7 of 2021
2	Section 448	Complaint under Section 448 (false statements) – Para 22 of IR	SPCS No. 6 of 2021
3	Section 129(7)	Contravention of Section 129(1)/133 – non-compliance with AS-18 / IND AS-24, r/w Rule 4A of Companies (Accounts) Second Amendment Rules, 2015 – Para 26 of IR	C.C. No. 1789 of 2020
4	Section 129(7)	Contravention of Section 129(5) – Para 27 of IR	C.C. No. 1780 of 2020
5	Section 129(7)	Contravention of Section 129(1) – Para 28 of IR	C.C. No. 1795 of 2020
6	Section 128(6)	Contravention of Section 128 (books of account) – Para 29 of IR	C.C. No. 1808 of 2020
7	Section 129(7)	Contravention of Section 129(1) r/w Part II(5)(vii)(b) of Schedule III – Para 32 of IR	C.C. No. 1801 of 2020
8	Section 129(7)	Contravention of Section 129(1) r/w Part III(2) of Schedule III – Para 34 of IR	C.C. No. 1806 of 2020
9	Section 147	Contravention of Section 143(2) & (3) – Para 36 of IR	C.C. No. 1799 of 2020

10	Section 147	Contravention of Section 143(1) – Para 37 of IR	C.C. No. 1809 of 2020
11	Section 147	Contravention of Section 143(12) r/w Rule 13 of Companies (Audit & Auditors) Rules, 2014 – Para 38 of IR	C.C. No. 1784 of 2020

3.6 In conclusion, the Dy. RoC submitted that, subject to the facts and circumstances noted, this Hon'ble Tribunal may pass such orders as deemed fit and proper in the interest of justice.

4. In reply report of the Dy. RoC, the Petitioner has filed its additional affidavit on 21.08.2025 vide inward diary no. D-5693, mentioning certain facts in response of the Dy. RoC's report as under: -

4.1 It is stated that averments contained in Para 1 to 6 of the Dy. RoC's report are matters of record and do not require specific response.

4.2 With respect to Para 7 of the RoC's report, the Petitioner submits that the investigation ordered by the Ministry of Corporate Affairs vide order dated 24.12.2019 under Section 210(1)(c) of the Companies Act, 2013 was challenged before the Hon'ble Gujarat High Court. The Special Civil Application No. 8500 of 2021 was rejected on 23.06.2021, whereafter Letters Patent Appeal (LPA) No. 592 of 2021 was filed. In the said appeal, vide order dated 30.07.2021, the Hon'ble High Court restrained the Ministry from taking coercive measures without leave of the Court. It is contended that pendency of such investigation has no bearing on the present petition under Section 55(3).

4.3 With respect to Para 8 of the RoC's report, the Petitioner submits that prosecutions filed against its officers have been challenged before the Hon'ble Gujarat High Court and stays have been granted. The details are submitted as under:

Sr. No.	**CC No.**	**Details of Proceedings before The Hon'ble High Court of Gujarat**
1	SPCS No. 7 of 2021	Officers of the Petitioner has preferred Criminal Misc. Application No. 25091 of 2024 before Hon'ble High Court of Gujarat. Vide order dated 17.02.2025, Hon'ble High Court of Gujarat was pleased to grant stay on further proceedings. (A copy of memo of Crim Misc. Application No. 25091 of 2024 and order dated 17.02.2025 is marked and annexed hereto as Annexure - "R2")
2	SPCS No. 6 of 2021	Officers of Petitioner has preferred Criminal Misc. Application No. 24197 of 2024 before Hon'ble High Court of Gujarat. Vide order dated 12.12.2024, Hon'ble High Court of Gujarat was pleased to grant stay on further proceedings. (A copy of memo of Crim Misc. Application No. 24197 of 2024 and order dated 12.12.2024 is marked and annexed hereto as Annexure - "R3")

<table>
<tr><td>3</td><td>CC No. 1789 of 2020</td><td rowspan="6">Officers of the Petitioner has preferred Company Petition challenging show cause notices. Thereafter, Registrar of Companies initiated prosecution pursuant to the said showcause notice. Therefore, Petitioner was constrained to file OJ Civil Application (for Direction) No. 1 of 2024 before Hon'ble High Court of Gujarat. Vide order dated 29.10.2024, the Hon'ble High Court of Gujarat was pleased to grant stay on the said prosecutions. (A copy of memo of OJ Civil Application (for Direction) No. 1 of 2024 in Company Petition 1 of 2019 and order dated 29.10.2024 passed in OJ Civil Application (for Direction) No. 1 of 2024 is marked and annexed hereto as Annexure - "R4")</td></tr>
<tr><td>4</td><td>CC No. 1780 of 2020</td></tr>
<tr><td>5</td><td>CC No. 1795 of 2020</td></tr>
<tr><td>6</td><td>CC No. 1808 of 2020</td></tr>
<tr><td>7</td><td>CC No. 1801 of 2020</td></tr>
<tr><td>8</td><td>CC No. 1806 of 2020</td></tr>
<tr><td>9</td><td>CC No. 1799 of 2020</td><td rowspan="3">It is submitted that these three prosecutions are against Auditor of Petitioner, wherein Petitioner is not even a party. Under the circumstances, these prosecutions are not germane for the purpose of present proceedings.</td></tr>
<tr><td>10</td><td>CC No. 1809 of 2020</td></tr>
<tr><td>11</td><td>CC No. 1784 of 2020</td></tr>
</table>

4.4 It is reiterated that pendency of these prosecutions will not affect the present petition. Firstly, because they stand stayed by orders of the Hon'ble High Court; secondly, because the relief sought herein is confined to issuance of further redeemable preference shares under Section 55(3).

4.5 The Petitioner further submits that all unredeemed preference shares are held by six shareholders, out of which five have given written consents on affidavit. A Practicing Company Secretary has certified the same.

4.6 As regards the one shareholder, Ahmedabad Aviation and Aeronautics Limited, who has not consented, the Petitioner undertakes to redeem forthwith 10,50,000 preference shares of Rs.10/- each held by it, at par, in accordance with any order passed by this Bench/Tribunal.

4.7 the Petitioner prayed that the present petition be allowed, as the objections raised in the RoC's report stand duly addressed and neutralised by judicial orders of the Hon'ble High Court and by the consents of majority preference shareholders.

5. The Regional Director, North-West Region, Ministry of Corporate Affairs, at Ahmedabad has filed a report on 15.10.2025 vide inward no. R-473. The brief of the report is narrated as under: -

5.1 It is stated that the Directorate received a notice/order of this Bench dated 09.04.2025 under Section 55(3) of the Companies Act, 2013 on 11.04.2025 from the Petitioner Company, M/s. Electrotherm (India) Limited for the issuance of 6% NCRPS in 2004-2005, their allotment, and subsequent variation of redemption terms in 2006, as st out in paragraphs 3 to 7 of the representation are matters of record and undisputed.

5.2 With respect to Para 8 of the Representation, the Petitioner reiterates that while the Company recorded revenue of Rs.4,271.50 crores and net profit of Rs.319.43 crores in FY 2023-24, it continues to carry forward accumulated losses of Rs.1,424.06 crores and negative reserves (excluding capital reserves) of Rs.893.37 crores. In view of proviso (a) to Section 55(2) read with the fourth proviso to Section 123(1) of the Companies Act, 2013, the Company is legally incapacitated from redeeming NCRPS due in March, April and May 2025 out of profits.

5.3 With respect to Para 12 of the Representation, the Petitioner confirms that the Board of Directors, in its meeting dated 11.02.2025, duly resolved to issue 1,20,00,000 NCRPS of Rs.10 each to the existing six preference shareholders, equivalent to Rs.12,00,00,000/- on the same terms as the original issue. The Board Resolution has been annexed to the Petition and evidences compliance with Section 55(3).

5.4 The Regional Director reiterated the allocation details as produced earlier in our order, as submitted by the Petitioner Company.

5.5 It is submitted by the Petitioner Company that subsequent to the allotment of the 6%

Non-Cumulative Redeemable Preference Shares (NCRPS) in 2004–2005, and upon receipt of the consent from all the aforementioned six NCRPS holders, the Board of Directors of the Petitioner Company, in its meeting held on 30.04.2006, resolved to vary the terms of redemption.

5.6 As stated, the variation substituted the word and phrase "2 years" in place of "10 years", thereby making the said 6% NCRPS redeemable not earlier than 2 (two) years but not later than 20 (twenty) years from the date of issue.

5.7 It is further stated by the Company that 20 years from the dates of allotment of the aforementioned 6% Non-Cumulative Redeemable Preference Shares (NCRPS) will be completed in the months of March, April, and May 2025 respectively. Accordingly, the following NCRPS are due for redemption:

No. of NCRPS	Due Date for Redemption
35,60,000	On or before 10.03.2025
44,40,000	On or before 31.03.2025
40,00,000	On or before 13.05.2025

5.8 It is submitted that during the financial year ended on 31.03.2024, the Petitioner Company had total revenue from operations of Rs. 4,271.50 crores and net profit of Rs. 319.43 crores. However, the Company carried forward accumulated losses/retained earnings of Rs. (1,424.06) crores as on 31.03.2024, and its Other Equity/Reserves & Surplus (excluding capital reserves) stood at Rs. (893.37) crores. The breakup of reserves and surplus (as on 31.03.2024) is as under:

Particulars	Amount (Rs. in Crores)
Securities Premium	240.01
General Reserves	290.68
Retained Earnings	(1,424.06)
Total (excluding capital reserves)	(893.37)

5.9 It is further submitted that:

- As per proviso (a) to Section 55(2) of the Companies Act, 2013, preference shares can be redeemed only out of distributable profits or out of the proceeds of a fresh issue of shares.
- As per the fourth proviso to Section 123(1) of the Companies Act, 2013, no company shall declare dividend unless carried-over previous losses and depreciation are set off against current year profits.

In view of the above statutory provisions, and on account of the accumulated losses, the Petitioner Company is not in a position to redeem any preference shares due in March, April, and May 2025.

5.10 It is submitted that the Petitioner Company has duly considered the proposal for further issue of preference shares to the existing shareholders, pursuant to Section 55(3) of the Companies Act, 2013, in its Board Meeting held on 11.02.2025. The Board of Directors passed the following resolution:

"That subject to approval of the Hon'ble NCLT and other appropriate authorities, the consent of the Board of Directors of the Company be and is hereby accorded to issue and allot, in one or more tranches, 1,20,00,000 6% Non-Cumulative Redeemable Preference Shares (NCRPS) of Rs.10 each, equivalent to the amount of unredeemed preference shares of Rs.12,00,00,000."

5.11 The proposed issue of NCRPS is tabulated as under:

Sr. No.	Name of Shareholder	No. of 6% NCRPS held
1	Web Businesses.com Global Limited	27,30,000
2	Lavish Packagers Limited	25,80,000
3	Froid Finance and Investments Pvt. Ltd.	12,00,000
4	Highland Finances & Investments Pvt. Ltd.	32,40,000
5	Ahmedabad Aviation and Aeronautics Limited	10,50,000
6	Mr. Shailesh Bhandari	12,00,000
Total		**1,20,00,000 (Rs.12 crore)**

5.12 It is submitted that the Ministry of Corporate Affairs, vide Order No. 7/168/2018-CL.II(NWR) dated 08.10.2018, ordered an Inspection into the affairs of the Petitioner Company under Section 205(5) of the Companies Act, 2013.

5.13 Further, the Central Government, in exercise of powers conferred under Section 210(1)(c) of the Companies Act, 2013, ordered an Investigation into the affairs of the Company vide Order No. 1/131/2019-CL.II(NWR) dated 02.12.2019.

5.14 The Inspection Report and Investigation Report in the matter have been sent to the Central Government, and instructions of the Ministry on the said reports have been forwarded to the Registrar of Companies for necessary action.

5.15 In this regard, it is stated by the Regional Director (NWR) that this bench may direct the Applicant Company to undertake to comply with any direction or order issued by the ROC, Regional Director, or Ministry in the matter of all pending proceedings under the Companies Act, 2013.

6. The Petitioner further filed an additional affidavit on 12.12.2025 vide inward no. D-8490 by clarifying and averring the issues raised by the Regional Director (NWR)'s Report as under: -

6.1 It is stated that the present affidavit has been filed specifically to deal with the Regional Director's report dated 26.09.2025. The Petitioner has rightly noted that Paragraphs 1–3 are matters of record and require no substantive response.

6.2 The Petitioner submitted that the observations in Paragraphs 5–12 of the RD's report are factual in nature, based on records already produced before the Tribunal, and hence do not require specific rebuttal.

6.3 Regarding the investigation order dated 24.12.2019 under Section 210(1)(c) of the Companies Act, 2013, the Petitioner clarifies that the order is under challenge before the Hon'ble Gujarat High Court. Special Civil Application No. 8500 of 2021 was rejected, but Letters Patent Appeal No. 592 of 2021 resulted in interim protection vide order dated 30.07.2021, restraining the Ministry of Corporate Affairs from coercive action without leave of the Court. The Petitioner further submits that pendency of investigation has no bearing on the present petition under Section 55(3), and undertakes to comply with lawful directions of ROC/Regional Director/Ministry, subject to remedies available.

6.4 The Petitioner stated that Para-10 of the RD's report is formal in nature and does not require specific reply.

6.5 The Petitioner reiterates the High Court's stay orders on prosecutions initiated by the ROC. The complete details of prosecution are already furnished in this order.

6.6 The Petitioner submits that general observations in Para 7(i)–(iii) are factual and need no reply. As regards Para 7(iv), rights of secured creditors are unaffected, and Section 55(3) does not require their consent. Similarly, Para 7(v) observations on equity shareholders are misplaced, since Section 48 applies only to variation of class rights; here, only preference shareholders' consent is relevant.

6.7 The Petitioner confirms that 5 out of 6 preference shareholders (holding 91.25% NCRPS) have given written consents on affidavit, certified by a Practicing Company Secretary. For the one non-consenting shareholder, Ahmedabad Aviation and Aeronautics Ltd., the Petitioner undertakes to redeem 10,50,000 shares at par as directed by the Tribunal. Section 48(2) timelines are not applicable, as the petition is under Section 55(3).

6.8 The Petitioner undertook to comply with all statutory requirements under applicable laws and to file a certified copy of the Tribunal's order with the ROC within 30 days of receipt.

7. The Regional Director (NWR) Shri Rajesh Kumar Dalmia has filed written submissions on 30.01.2026 vide inward no.R-164. The same has been perused. The written submissions represent factual details and hence, for the sake of brevity the same has not been reiterated.

8. The synopsis and convenience chart has been placed on record by the Petitioner's counsel, filed on 05.03.2026 vide inward no. D-1043.

9. On 18.03.2026 vide inward no. D-2406, the Regional Director (NWR) has placed on records certain additional facts by filing Revised Additional Report in compliance of our order dated 16.02.2026.

9.1 In brief, the affidavit was filed to bring on record certain reports with regard to observations made by the applicant in his additional affidavit filed on 10.12.2025.

9.2 It is stated that on perusal of the financial statements/ record filed by the company, it is observed that the company is a profit-making company, having profit of Rs.319.43 Crores and Rs.428.60 Crores as on 31.03.2024 and 31.03.2025. As stated, and tabulated below:

Sr. No.	Particulars	2022-23	2023-24	2024-25
1	Profit / (Loss)	Rs. (76.66) Crore	Rs. 319.43 Crore	Rs. 428.60 Crore
2	Accumulated Loss / Retained Earnings	Rs. (1744.51) Crore	Rs. (1424.06) Crore	Rs. (994.98) Crore
3	Capital Reserve	Rs. 158.41 Crore	Rs. 158.41 Crore	Rs. 341.38 Crore

9.3 (Capital Discrepancy): The petition stated that the company's issued, subscribed and fully paid-up capital is **Rs. 24.74** crore (comprising equity and preference shares). However, as per the Master Data and Balance Sheet filed on 31.03.2024, the paid-up capital is only **Rs. 12.74** crore. The 1,20,00,000 NCRPS of Rs.10 each have been disclosed under "Short Term Borrowings" in Note No. 18 of the Balance Sheet, not under share capital.

9.4 (Consent of Preference Shareholders): Out of six preference shareholders, five have given consent for reissuance of preference shares. One shareholder, Ahmedabad Aviation and Aeronautics Limited, has not consented. The RD emphasizes compliance with Section 55(3) of the Companies Act, 2013, including its proviso and explanation:

- Tribunal must order redemption forthwith of shares held by non-consenting holders.
- Issue of further redeemable preference shares shall not be deemed an increase or reduction of share capital.

The RD also notes that the petition does not specifically mention issuance of further shares equal to the amount due and dividend thereon, as required by Section 55(3).

9.5 (Pending High Court Matter): The RD records that Civil Application No. 01 of 2026 has been filed before the Hon'ble Gujarat High Court seeking vacation/modification of the interim order dated 30.07.2021 passed in LPA No. 592 of 2021. The matter is listed for hearing on 27.03.2026.

10. The Petitioner has filed an additional affidavit on 27.03.2026 vide inward no. D-2767. The brief of the reply – additional affidavit is stated as under: -

10.1 It is stated that the present affidavit has been filed to specifically respond to the Regional Director's report dated 16.03.2026. The Petitioner clarifies that all earlier pleadings and affidavits already on record shall be deemed part of this affidavit, ensuring continuity of submissions.

10.2 The Petitioner stated that Paragraphs 1–2 of the RD's report are formal in nature, relating to authority and competence of the Regional Director, and therefore require no substantive reply.

10.3 On the financial observations, the Petitioner submitted that profitability alone does not permit redemption of preference shares. Section 55 of the Companies Act, 2013 mandates redemption only out of profits available for dividend. Section 123 further prohibits declaration of dividend unless accumulated losses and depreciation are set off. Since the Company carried forward losses of Rs. 1,424.06 crore in FY 2023-24 and Rs. 994.98 crore in FY

2024-25, profits of Rs. 319.43 crore and Rs. 428.60 crore respectively could not be used for dividend or redemption. Thus, despite being profit-making, the Company was legally barred from redeeming NCRPS.

10.4 The Petitioner averred on the alleged discrepancy in company capital, the Petitioner clarifies that Rs. 12.74 crore represents equity share capital, while Rs. 12 crore represents preference share capital. Together, these figures match the petition's disclosure. The Petitioner emphasizes that Para 4.2 of the petition correctly distinguishes equity and preference capital, consistent with master data and the balance sheet as on 31.03.2024.

10.5 The Petitioner reiterated compliance with Section 55(3). Five preference shareholders, holding 91.25% of NCRPS, have given written consents on affidavit, certified by a Practicing Company Secretary. For the one non-consenting shareholder, Ahmedabad Aviation & Aeronautics Ltd., the Petitioner undertakes to redeem 10,50,000 shares at par, as directed by the Tribunal. This addresses the RD's concern fully.

10.6 The Petitioner submitted that the Regional Director has filed an application before the Hon'ble Gujarat High Court seeking vacation/modification of the interim order dated 30.07.2021 in LPA No. 592 of 2021. However, the Petitioner submits that such proceedings have no bearing on the present petition under Section 55(3). The High Court, by order dated 23.03.2026, directed the Petitioner to place subsequent developments on record and directed the Regional Director to take instructions regarding continuation of the matter under Section 210. Thus, the issue remains sub judice and independent of the relief sought herein.

10.7 Hence, the Petitioner prayed to allow the present petition.

11. We have heard Ld. Counsel for the Petitioner, Ld. Counsel for the Respondents, considered the oral submissions of both parties and perused the material on record.

The observations of the Tribunal

12. The present Company Petition has been preferred under Section 55(3) of the Companies Act, 2013 seeking permission of this Tribunal to issue and allot further 1,20,00,000 (One Crore Twenty Lakhs) 6% Non-Cumulative Redeemable Preference Shares of Rs.10/- each to the existing 6% Non-Cumulative Redeemable Preference Shares holders in lieu of the existing unredeemed preference shares, which have become due for redemption, with a consequential declaration that upon such issuance, the existing preference shares shall be deemed to have been redeemed.

13. We have carefully considered the pleadings, the documents placed on record, the reports submitted by the Registrar of Companies and the Regional Director, the additional affidavits filed by the Petitioner from time to time, the written submissions of the Regional Director, and the oral submissions advanced by the learned counsel appearing for the respective parties.

14. The material placed on record establishes that the Petitioner Company had originally issued 6% Non-Cumulative Redeemable Preference Shares during the year 2005 pursuant to the resolutions passed by the shareholders. Subsequently, upon obtaining the consent of all the then preference shareholders, the Board varied the redemption terms in accordance with the then applicable provisions of the Companies Act, 1956, whereby the preference shares became redeemable not earlier than two years and not later than twenty years from their respective dates of allotment.

15. It is an admitted position that the aforesaid preference shares became due for redemption during March, April and May, 2025. The aggregate value of the preference shares due for redemption is Rs.12,00,00,000/- represented by 1,20,00,000 preference shares of Rs.10/- each.

16. The principal question for consideration is whether the Petitioner Company has established sufficient grounds for invoking Section 55(3) of the Companies Act, 2013.

17. Section 55(2) of the Companies Act, 2013 permits redemption of preference shares only out of profits available for distribution as dividend or out of the proceeds of a fresh issue of shares made for the purpose of such redemption. Further, the fourth proviso to Section 123(1) mandates that no dividend can be declared unless carried forward losses and depreciation have first been set off against the profits of the company.

18. The audited financial statements placed on record reveal that although the Company has earned profits during the financial years 2023-24 and 2024-25, it continues to carry substantial accumulated losses and negative retained earnings. Consequently, the profits earned by the Company are not available for declaration of dividend in view of the statutory embargo contained under Section 123(1) of the Companies Act, 2013. Therefore, the Company cannot redeem the preference shares out of profits available for distribution.

19. The Tribunal is unable to accept the contention of the authorities that the mere existence of accounting profits automatically enables redemption of preference shares. The statutory requirement under Section 55 read with Section 123 is not merely the existence of profits, but the existence of profits legally available for declaration of dividend. The distinction is fundamental and has been satisfactorily explained by the Petitioner.

20. As the company does not have profits available for distribution of dividends, such issued non-convertible preference shares that has become due for redemption can only be redeemed out of the proceeds of a fresh issue of shares made for the purpose of such redemption (second proviso to section 55 (2) of the Companies Act, 2013).

21. Section 55 (3) of the Companies Act, 2013 reads as below:

3) Where a company is not in a position to redeem any preference shares or to pay dividend, if any, on such shares in accordance with the terms of issue (such shares hereinafter referred to as unredeemed preference shares), it may, with the consent of the holders of three-fourths in value of such preference shares and with the approval of the Tribunal on a petition made by it in this behalf, issue further redeemable preference shares equal to the amount due, including the dividend thereon, in respect of the unredeemed preference shares, and on the issue of such further redeemable preference shares, the unredeemed preference shares shall be deemed to have been redeemed:

Provided that the Tribunal shall, while giving approval under this sub-section, order the redemption forthwith of preference shares held by such persons who have not consented to the issue of further redeemable preference shares.

Explanation.—For the removal of doubts, it is hereby declared that the issue of further redeemable preference shares or the redemption of preference shares under this section shall not be deemed to be an increase or, as the case may be, a reduction, in the share capital of the company.(Notified on 01-06-2016)

22. We further find that the Board of Directors has duly approved the proposed issuance of further redeemable preference shares by resolution dated 11.02.2025 and that the proposal has also been considered by the Audit Committee in view of the related party aspects involved in the proposed allotment to Ahmedabad Aviation and Aeronautics Limited and Mr. Shailesh Bhandari.

23. The proposed issue shall also remain subject to compliance with SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 and such other directions as may be applicable to listed entities.

24. The record further reflects that five out of the six existing preference shareholders, representing about 91.25% of the total preference shareholding, have furnished their written consent by way of affidavits agreeing to the proposed issuance of further redeemable preference shares under Section 55(3). A certificate issued by a Practising Company Secretary confirming the same has also been placed on record. The positive consent of the holders holding 91.25% is more than the requirement of three-fourth in value of such unredeemed preference shares and therefore the consent meets the required threshold.

25. Insofar as **Ahmedabad Aviation and Aeronautics Limited** is concerned, admittedly no written consent has been furnished. However, the Petitioner has unequivocally undertaken before this Tribunal to redeem forthwith the entire holding of 10,50,000 preference shares standing in the name of the said shareholder at par in accordance with the proviso to Section 55(3). We record the said undertaking.

26. In our considered view, the aforesaid undertaking sufficiently addresses the statutory requirement contained in the proviso to Section 55(3) of the Companies Act, 2013 relating to non-consenting preference shareholders. From the pleadings, affidavits, documentary evidence and submissions placed on record, this Tribunal is satisfied that the conditions stipulated under Section 55(3) of the Companies Act, 2013 stand fulfilled, namely that: -

(i) the preference shares have become due for redemption;
(ii) the Company is unable to redeem such shares in accordance with Section 55(2);
(iii) consent in writing has been obtained from the holders of not less than three-fourths in value of such preference shares; and
(iv) suitable provision has been made for redemption of the preference shares held by the non-consenting shareholder.

27. The Registrar of Companies as well as the Regional Director have brought to the notice of this Tribunal that certain inspections, investigations and prosecutions are pending against the Company and some of its officers under various provisions of the Companies Act, 2013.

28. However, we find that the relief sought in the present proceedings is confined to the exercise of jurisdiction under Section 55(3) of the Companies Act, 2013. The pending investigations, prosecutions and proceedings relate to independent causes of action arising under different statutory provisions and do not directly govern the adjudication of the present petition.

29. The Petitioner has also placed on record the interim orders passed by the Hon'ble High Court of Gujarat in the connected proceedings. Without expressing any opinion on the merits of those proceedings, we are satisfied that the pendency thereof does not constitute a legal bar for consideration of the present petition.

30. The Regional Director has also expressed concern regarding the presentation of the preference shares in the financial statements and the apparent discrepancy in the paid-up capital reflected in the Master Data. We have considered the explanation offered by the Petitioner that the equity share capital and preference share capital have been separately disclosed in the accounts and that the accounting treatment adopted does not alter the legal existence of the preference shares sought to be dealt with under the present petition. In the absence of any material establishing prejudice to any stakeholder, we do not find this objection sufficient to reject the petition.

31. Likewise, the observations of the Regional Director regarding pending inspection and investigation under Sections 205 and 210 of the Companies Act, 2013 cannot operate as an embargo against the exercise of jurisdiction under Section 55(3). Nevertheless, the Company shall remain bound by every lawful direction, order or proceeding initiated by the competent authorities under the Companies Act, 2013, irrespective of the present order.

32. It is also relevant that issuance of further redeemable preference shares under Section 55(3) is specifically declared by the statute not to constitute either an increase or a reduction of the share capital of the Company. Consequently, no question of diminution of shareholders' rights or alteration of capital structure arises by virtue of the present order.

33. The material placed before us further establishes that no prejudice is likely to be caused either to the equity shareholders or to the creditors of the Company by permitting the proposed issuance. Rather, the proposed arrangement facilitates compliance with the statutory scheme governing redemption of preference shares while preserving the rights of all stakeholders. No material has been placed on record to show that issuance of further redeemable preference shares would adversely affect the rights of any secured creditor, unsecured creditor or statutory authority. On the contrary, the arrangement merely substitutes one redeemable preference share with another in accordance with Section 55(3) to the same existing shareholders.

34. We are therefore satisfied that the Petitioner has established the existence of the circumstances contemplated under Section 55(3) of the Companies Act, 2013 and has made out a fit case for exercise of the jurisdiction vested in this Tribunal.

35. This Tribunal is satisfied that exercise of discretionary jurisdiction under Section 55(3) is warranted in the peculiar facts of the present case since refusal of permission would defeat the statutory mechanism provided by Parliament for redemption of preference shares where redemption under Section 55(2) is legally impossible

36. Accordingly, the Company Petition is allowed with the following directions: -

(i) The Petitioner Company is permitted under Section 55(3) of the Companies Act, 2013 to issue and allot 1,09,50,000 (One Crore nine Lakhs and fifty thousands) 6% Non-Cumulative Redeemable Preference Shares of Rs.10/- each to the existing five preference shareholders (except Ahmedabad Aviation and Aeronautics Limited) on the same terms and conditions as the original issue, redeemable not earlier than two years and not later than twenty years from the date of such allotment.

(ii) Upon such issuance and allotment, the existing unredeemed preference shares corresponding thereto shall stand deemed to have been redeemed in accordance with Section 55(3) of the Companies Act, 2013.

(iii) In respect of **Ahmedabad Aviation and Aeronautics Limited,** being the non-consenting preference shareholder, the Petitioner Company shall redeem 10,50,000 preference shares of Rs.10/- each at par forthwith, in accordance with the proviso to Section 55(3) of the Companies Act, 2013.

(iv) The issuance of further redeemable preference shares pursuant to this order shall not be treated as an increase or reduction of the share capital of the Company.

(v) The Petitioner shall comply with all applicable provisions of the Companies Act, 2013, the Companies (Share Capital and Debentures) Rules, 2014, SEBI (LODR) Regulations, 2015, and other applicable laws, including necessary filings with the Registrar of Companies including filing of necessary returns in Form SH-7 and/or PAS-3, as applicable.

(vi) This order shall not prejudice or affect any pending investigation, inspection, prosecution or any proceedings initiated or to be initiated by the Registrar of Companies, the Regional Director, the Central Government or any other statutory authority under the Companies Act, 2013 or any other law for the time being in force.

(vii) The Petitioner Company shall file a certified copy of this order with the Registrar of Companies within the period prescribed under the Companies Act, 2013 and shall complete all consequential statutory filings within 30 days of receipt of the certified copy, as per Rule 69 of NCLT Rules, 2016.

(viii) Nothing contained in this order shall be construed as approval of any act or omission which is otherwise contrary to law.

37. Accordingly, Company Petition **No.21/(AHM)/2025** stands **allowed** in terms of the directions contained hereinabove and is accordingly disposed of. There shall be no order as to costs.

38. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

-Sd-

SANJEEV SHARMA
MEMBER (TECHNICAL)

-Sd-

SHAMMI KHAN
MEMBER (JUDICIAL)

Alpesh (PS)