

**IN THE NATIONAL COMPANY LAW TRIBUNAL
COURT NO. 5, MUMBAI BENCH**

C. P. NO.903/MB/2020

In the matter of Section 66 of
the Companies Act 2013 and
the Rules framed thereunder

AND

In the matter of Reduction of
Share Capital of Chawla
Brothers Private Limited

Chawla Brothers Private Limited, a)
Company incorporated under the)
provisions of the Companies Act, 1956,)
having its registered office at Pooran)
Asha Building, 317, NarsiNatha Street, ... Petitioner Company
Masjid Bander, Mumbai – 400009,
Maharashtra, India.
CIN: U74999MH1962PTC012324.

Order delivered on 30.04.2021

Coram:

Smt. Suchitra Kanuparthi, Member (Judicial)
Shri. Chandra Bhan Singh, Member (Technical)

Appearances (via video conferencing):

For the Petitioner: Senior Counsel Mr. Gaurav
Joshi along with Mr. Saurabh
Pakale i/b. A. T. Jain & Co
For the Regional Director: Ms. Rupa Sutar, Deputy
Director, Office of RD, Western
Region, MCA

Per: Suchitra Kanuparthi, Member (Judicial)

ORDER

1. Heard the Learned Counsel for the Petitioner Company. No objector has come before the Tribunal to oppose the Petition and nor has any party controverted any averments made in the Petition.

Briefs Facts:

2. The Petitioner is a private limited company incorporated on 16.04.1962 with Registrar of Companies, Mumbai
3. A Special Resolution was passed by the Equity Shareholders of the Petitioner Company in terms of the above in its Extra Ordinary General Meeting on 7th March, 2020. Another Special Resolution in terms of the above was unanimously approved by the Preference Shareholders of the Petitioner on the same date. The Resolution is as follows;
 - i. *Reduction of its equity share capital by reducing the paid-up equity share capital from Rs. 48,01,000/- divided into 48,010 Equity Shares of Rs. 100/- each, fully paid up to Rs. 21,12,500/- divided into 21,125 Equity Shares of Rs. 100/- each, fully paid up by 2.5 of The Scheme) bearing CTS No. 13A-1 having an area of 31.16 Sq. Mts. and cancelling and extinguishing 26,885 fully paid up equity shares of Rs.100/- each held by M/s Prasun Spaces LLP, Shareholder of the Petitioner Company, and in lieu of the cancelled equity shares transfer to M/s Prasun Spaces LLP, Shareholder of the Petitioner Company, part of the Property (as defined in Para 2.5 of The Scheme) bearing CTS No. 13A having an area of 7,903.93 Sq. Mts., part of the Property (as defined in Para Industrial Structure on the Plot, and remitting a sum of Rs. 388.87/- per equity share which is cancelled as aforesaid.*
 - ii. *Reduction of its 1% Redeemable Preference Share Capital by reducing the paid-up 1% Redeemable Preference Share Capital from Rs. 10,50,00,000/- divided into 10,50,000 1% Redeemable Preference Shares of Rs. 100/- each, fully paid up to Rs. 5,25,00,000/- divided into 5,25,000 1%*

Redeemable Preference Shares of Rs. 100/- each, fully paid up by cancelling and extinguishing 5,25,000 fully paid up 1% Redeemable Preference shares of Rs.100/- each held by M/s Prasun Spaces LLP, Shareholder of the Petitioner Company, and in lieu of the cancelled 1% Redeemable Preference Shares transfer to Prasun Spaces LLP, shareholder, part of the Property (as defined in Para 2.5 of The Scheme) bearing CTS No. 13A having an area of 855.57 Sq. Mts.

4. The Shareholding pattern of the Petitioner Company is as follows:

A) Equity Shareholding

Sr No	Name of the Shareholder	No of Equity Shares	Face Value per Share	Amount of Share Capital	Percentage Shareholding
1	Prasun Spaces LLP	26,885	100	26,88,500	56%
2	Vinay Tarachand Chawla	7,560	100	7,56,000	15.75%
3	Tarachand Chawla	3,665	100	3,66,500	7.63%
4	Jyoti Chawla	9,900	100	9,90,000	20.62%
	Total	48,010		48,01,000	100%

B) Preference Shareholding

Sr No	Name of the Shareholder	No of Preference Shares	Face Value per Share	Amount of Share Capital	Percentage Shareholding
1	Prasun Spaces	5,25,000	100	5,25,000	50%

	LLP				
2	Vinay Taracha and Chawla	2,62,500	100	2,62,50, 000	25%
3	Taracha and Chawla	2,62,500	100	2,62,50, 000	25%
	Total	10,50,00 0		10,50,0 0,000	100%

5. The Petitioner Company is the owner of the Property located at CTS No 13A, 13A-1 and 13B, Chandivali Road, Off Saki-Vihar Road, Andheri (E), Mumbai admeasuring 16,299.40 sq. mts. Along with an Industrial Structure on the Plot. The said Plots are lying idle and currently no business is carried out thereon.
6. There are only 4 shareholders in the Company. One of the shareholders of the Petitioner Company, namely Prasun Spaces LLP, holding 56% of the Equity Shareholding and 50% of the Preference Shareholding wished to exit from the Petitioner Company in consideration of its share of Property and Net Assets in the Petitioner Company.
7. Article 7 of the Articles of Association of the Petitioner Company empowers the Petitioner Company to reduce its share Capital, which has been reproduced below:

“The Company may from time to time by Special Resolution subject to confirmation by the Court and subject to the provisions to 104 of the Act reduce its Share Capital in the, manner prescribed therein.”
8. On receiving the request from Prasun Spaces LLP, the Petitioner Company has obtained a Valuation Report from M/s. J.M. Mehta & Associates, Chartered Accountant. As per the Valuation Report, the fair value of the Equity and

Preference shareholding held by the shareholder, Prasun Spaces LLP and the Fair Value of the part of the Property and share in Net Assets to be transferred as consideration to Prasun Spaces LLP in lieu of the extinguishment of shares is as under:

	Particulars	Particulars	Remarks
A)	Fair value of each 1% Non-Convertible Redeemable Preference Shares (NCRPS) of the Petitioner Company	100	Part A of the Valuation Report
	No. of NCRPS held by Prasun Spaces LLP	525,000	
	Fair Value of the NCRPS held by Prasun Spaces LLP	5,25,00,000	
B)	Fair Value per equity share of the Petitioner Company	18,496	Part B of the Valuation Report
	No of equity shares held by M/s. Prasun Spaces LLP	26,885	
	Fair Value of the equity shares held by Prasun Spaces LLP	49,72,73,377	
	Total Fair Value of the shareholding held by Prasun Spaces LLP (A+B)	54,97,73,377	
	Consideration to be paid to Prasun Spaces LLP		
	Fair Value of Land at CTS No 13-A and 13A-1	53,93,18,607	
	Cash of Rs.388.87 per equity share (26,885 shares)	1,04,54,770	
	Fair Value of the Consideration to be paid to Prasun Spaces LLP	54,97,73,377	

9. The Board, vide resolution dated 6th March, 2020 has considered and approved the proposal to reduce the issued, subscribed and paid-up capital of the Company from:

- a) 48,010/- (Forty-Eight Thousand and Ten) Equity Shares of Rs. 100/- (Rupees Hundred Only) each to 21,125/- (Twenty-One Thousand, One Hundred and Twenty-Five) Equity Shares of Rs. 100/- (Rupees Hundred Only) each by cancelling and extinguishing 26,885/- (Twenty-Six Thousand, Eight Hundred and Eighty-Five) Equity Shares of Rs. 100/- (Rupees Hundred Only) each held by Prasun Spaces LLP, shareholder of the Company. The Company shall in lieu of the cancelled equity shares, transfer to the LLP, shareholder of the Company, part

of the Property (as defined in the Scheme) bearing CTS No. 13A having an area of 7,903.93 Sq. Mts., part of the Property (as defined in Scheme) bearing CTS No. 13A-1 having an area of 31.16 Sq. Mts. and Industrial Structure on the Plot, and remit to the LLP a sum of Rs. 388.87/- per equity share, which is cancelled as aforesaid.

- b) 10,50,000/- (Ten Lakh and Fifty Thousand) 1% Redeemable Preference Shares of Rs. 100/- (Rupees Hundred Only) to 5,25,000/- (Five Lakhs and Twenty-Five Thousand) 1% Redeemable Preference Shares of Rs. 100/- (Rupees Hundred Only) each by cancelling and extinguishing 5,25,000/- (Five Lakhs and Twenty-Five Thousand) 1% Redeemable Preference Shares of Rs. 100/- (Rupees Hundred Only) each held by Prasun Spaces LLP, shareholder of the Company. The Company shall in lieu of the cancelled preference shares, transfer to the LLP, shareholder of the Company, part of the Property (as defined in the Scheme) bearing CTS No. 13A and having area of 855.57 Sq. Mts.

10. Accordingly, notices were issued for convening the Extra-Ordinary General Meeting of the Equity Shareholders and Preference Shareholders of the Petitioner Company along with the Explanatory Statement pursuant to Section 102 (1) of the Companies Act, 2013.
11. The Equity and Preference shareholders of the Petitioner Company passed a Special Resolution in their respective Extra Ordinary General Meetings dated 7th March, 2020, giving consent to the Scheme of Reduction of Share Capital in accordance with the provisions of Section 66 and other applicable provisions, if any, of the Companies Act, 2013 read with the applicable rules therein, and subject to the approval from the National Company Law Tribunal ('NCLT') and other statutory authorities as and where applicable.

12. There are no secured and/or unsecured creditors in the Petitioner Company.
13. By way of the Order dated 24th July 2020, the Hon'ble NCLT was pleased to direct Publication/Dispatch of Notices and fixed the matter of Final Hearing. Pursuant thereto, Notices were issued to the Regional Director as well as the Registrar of Companies on 27th July 2020. An Advertisement was also published in two newspapers, namely '*Free Press Journal*' in English and '*Navshakti*' in Marathi, both having circulation in Mumbai.

Observations of the Regional Director:

14. The observations of the Regional Director are in Para 7 of the Report, which are mentioned as under:

“7. The observations of the Regional Director on the proposed Scheme of Reduction of Capital are as under:

A. It is respectfully submitted that the petitioner Company is proposing to reduce the paid-up share capital by cancelling and extinguishing 26,885/- Equity Shares of Rs.100/- each. The Company shall in lieu of the cancelled equity shares transfer to the shareholder of the company, part of the property and remit to the LLP a sum of Rs. 388.87/- per equity share and also to reduce the paid-up share capital by cancelling and extinguishing of 5,25,000/- (1%) Redeemable preference Share (RPS) of Rs. 100/- each. The Company shall in lieu of the cancelled preference shares transfer to the shareholder of the company part of the property bearing CTS No. 13A and having area of 855.57 Sq. Mts.

In this regard it is submitted that:

- (a) The proposed reduction of share capital is selective reduction.*
- (b) The reduction of capital is selective is detriment and unjust and unfair to the rest of shareholders/members*

holding equity share capital of the company. The reduction of share capital should be across the board and not in selective manner.

- (c) In this regard, it is further submitted that the present scheme is not falling strictly under Section 66 of the Companies Act, 2013, but the scheme appears to in the nature of sale of assets i.e. Plot of Land in guise of scheme. The provision of Section 66 read as under:*

“Reduction of Share Capital

Section – 66 (1) Subject to confirmation by the Tribunal reduce the share capital in any manner and in particular, may –

- (a) Extinguish or reduce the liability on any of its shares in respect of the share capital not paid up or,*
(b) Either with or without extinguishing or reducing liabilities on any of its shares:
(i) cancel any paid-up share capital which is lost or is unrepresented by available assets; or
(ii) pay off any paid -up share capital which is in excess of the wants of the Company.”

It is seen that the Provision of Section 66 do not permit such reduction and Transfer of assets.

B. Without prejudice the above:

(a) Applicant to submit an Affidavit to the effect that the Interest of the creditors and all stakeholders and Government Revenue are protected as well as statutory dues are paid off.

(b) The tax implication if any arising out of the proposal for reduction is subject to final decision of Income Tax Authorities. The approval of the Company Petition by this Hon'ble Court may not deter the Income Tax Authority to scrutinize the tax return filed by the Company after giving effect to the proposed reduction. The decision of

the Income Tax Authority is binding on the petitioner Company.”

Findings:

15. The Petitioner Company has proposed to reduce its share capital and has proposed to transfer the property bearing no. CTS No. 13A-01 having an area of 31.16 sq.mts. and industrial structure on the plot and also proposes to reduce one percent of redeemable preference share capital and transfer part of the property bearing CTS. No. 13A.
16. The company has carried out valuation and as per the valuation report, the fair value of equity and preference share holding held by the shareholders Prasun Spaces LLP and fair value of the part of the property and share a net asset to be transferred as consideration to Prasun Spaces LLP in lieu of shares is as under:

	Particulars	Particulars	Remarks
A)	Fair value of each 1% Non-Convertible Redeemable Preference Shares (NCRPS) of the Petitioner Company	100	Part A of the Valuation Report
	No. of NCRPS held by Prasun Spaces LLP	525,000	
	Fair Value of the NCRPS held by Prasun Spaces LLP	5,25,00,000	
B)	Fair Value per equity share of the Petitioner Company	18,496	Part B of the Valuation Report
	No of equity shares held by M/s. Prasun Spaces LLP	26,885	
	Fair Value of the equity shares held by Prasun Spaces LLP	49,72,73,377	
	Total Fair Value of the shareholding held by Prasun Spaces LLP (A+B)	54,97,73,377	
	Consideration to be paid to Prasun Spaces LLP		
	Fair Value of Land at CTS No 13-A and 13A-1	53,93,18,607	
	Cash of Rs.388.87 per equity share (26,885 shares)	1,04,54,770	

Fair Value of the Consideration to be paid to Prasun Spaces LLP	54,97,73,377
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17. The proposed reduction of capital as sought by the Petitioner company is well within the ambit of section 66 of the Companies Act, 2013. The said resolution was voted by the Preference share holder through 100% voting. The voting details is reproduced as below;

c) **VOTING DETAILS**

(i) the number of Equity Shareholders present and voting at the aforementioned meeting and number of shares or voting power held by them:

Voting Process	Number of Equity Shareholders voted through e-voting system and physical	Number of votes cast by them	% of total number of valid votes cast
E-voting	-	-	-
Physical or show of hand	48,010	48,010	100%
Total	48,010	48,010	100%

(ii) the number of Equity Shareholders who voted in favour of the resolution for Reduction of Share Capital and the number of shares or voting power held by them:

Voting Process	Number of Equity Shareholders voted through e-voting system and physical	Number of votes cast by them	% of total number of valid votes cast
E-voting	-	-	-
Physical or show of hand	48,010	48,010	100%
Total	48,010	48,010	100%

(iii) the number of Equity Shareholders who voted against the resolution and the number of shares or voting power held by them;

Voting Process	Number of equity shareholder voted through e-voting system and physical	Number of votes cast by them	% of total number of valid votes cast
			/

E-voting	-	-	-
Physical or show of hand	-	-	-
Total	-	-	-

18. The Petitioner has provided a justification of the scheme; The Company has received a request from the L.L P, shareholder of the Company for an exit option. In view of the request received, and after considering the valuation of the shares or the Company including the valuation of the Property, the Board of Directors proposed to provide exit to the LLP by transferring part of the Property (as defined in the Scheme) bearing CTS No. I3A having an area of 7,903.93 Sq. Mts. part of the Property (as defined in the Scheme) bearing CTS No. 13A-1 having an area of 31.16 Sq. Mts. & and Industrial Structure on the Plot, and remitting Rs. 388.87/- per Equity Share in lieu of cancellation of the equity shareholding of the LLP in the Company and transferring part of the Property as defined in the Scheme) bearing CTS No. 13A having an area of 855.57 Sq. Mts., in lieu of cancellation of the preference shareholding of the LLP in the Company.
19. The Petitioner also confirms that the consent of affidavit of all the preference shareholders is annexed to the petition, certificates of statutory auditors of the Petitioner company that certifying that there are no secured and unsecured creditors as on 6th March, 2020, the Petitioner company further confirms that there are no deposits and no arrears in repayment in deposits and interest there on.
20. The legal issue for consideration is arises for consideration
- A. is whether in a scheme of reduction of capital it is permissible for the company to extinguish its liability by paying off its shareholders (equity or preference of both) in terms of transfer of property

as proposed by the Petitioner company. The proposed transfer of property in lieu of cancellation and extinguishment of paid-up share capital of the Petitioner company is well within the four corners of reduction as contemplated under section 66 of the Act

21. It is pertinent to note that section 66 of the Companies Act, 2013

which defines share capital reduction. Section 66 is incorporated as follows;

“66. Reduction of share capital. — (1) *Subject to confirmation by the Tribunal on an application by the company, a company limited by shares or limited by guarantee and having a share capital may, by a special resolution, reduce the share capital in any manner and in particular, may—*

(a) *extinguish or reduce the liability on any of its shares in respect of the share capital not paid-up; or*

(b) *either with or without extinguishing or reducing liability on any of its shares, —*

(i) cancel any paid-up share capital which is lost or is unrepresented by available assets; or

(ii) pay off any paid-up share capital which is in excess of the wants of the company,

alter its memorandum by reducing the amount of its share capital and of its shares accordingly:

Provided that no such reduction shall be made if the company is in arrears in the repayment of any deposits accepted by it, either before or after the commencement of this Act, or the interest payable thereon.

(2) *The Tribunal shall give notice of every application made to it under sub-section (1) to the Central Government, Registrar and to the Securities and Exchange Board, in the case of listed companies, and the creditors of the company and shall take into consideration the representations, if any, made to it by that Government, Registrar, the Securities and Exchange Board and the creditors within a period of three months from the date of receipt of the notice:*

Provided that where no representation has been received from the Central Government, Registrar, the Securities and Exchange Board or the creditors within the said period, it shall be presumed that they have no objection to the reduction.

(3) *The Tribunal may, if it is satisfied that the debt or claim of every creditor of the company has been discharged or determined or has been secured or his consent is obtained, make an order confirming the reduction of share capital on such terms and conditions as it deems fit:*

Provided that no application for reduction of share capital shall be sanctioned by the Tribunal unless the accounting treatment, proposed by the company for such reduction is in conformity with the accounting standards specified in section 133 or any other provision of this Act and a certificate to that effect by the company's auditor has been filed with the Tribunal.

(4) *The order of confirmation of the reduction of share capital by the Tribunal under sub-section (3) shall be published by the company in such manner as the Tribunal may direct.*

(5) *The company shall deliver a certified copy of the order of the Tribunal under sub-section (3) and of a minute approved by the Tribunal showing—*

- (a) The amount of share capital;*
- (b) The number of shares into which it is to be divided;*
- (c) The amount of each share; and*
- (d) The amount, if any, at the date of registration deemed to be paid-up on each share,*

To the Registrar within thirty days of the receipt of the copy of the order, who shall register the same and issue a certificate to that effect.

- (6) Nothing in this section shall apply to buy-back of its own securities by a company under section 68.*
- (7) A member of the company, present, shall not be liable to any call or contribution in respect of any share held by him exceeding the amount of difference, if any, between the amount paid on the share, or reduced amount, if any, which is to be deemed to have been paid thereon, as the case may be, and the amount of the share as fixed by the order of reduction.*

(8) *Where the name of any creditor entitled to object to the reduction of share capital under this section is, by reason of his ignorance of the proceedings for reduction or of their nature and effect with respect to his debt or claim, not entered on the list of creditors, and after such reduction, the company is unable, within the meaning of sub-section (2) of section 271, to pay the amount of his debt or claim, —*

(a) every person, who was a member of the company on the date of the registration of the order for reduction by the Registrar, shall be liable to contribute to the payment of that debt or claim, an amount not exceeding the amount which he would have been liable to contribute if the company had commenced winding up on the day immediately before the said date; and

(b) if the company is wound up, the Tribunal may, on the application of any such creditor and proof of his ignorance as aforesaid, if it thinks fit, settle a list of persons so liable to contribute, and make and enforce calls and orders on the contributories settled on the list, as if they were ordinary contributories in a winding up.

- (9) Nothing in sub-section (8) shall affect the rights of the contributories among themselves.*
- (10) If any officer of the company—*

- (a) *Knowingly conceals the name of any creditor entitled to object to the reduction;*
- (b) *Knowingly misrepresents the nature or amount of the debt or claim of any creditor; or*

(c) *abets or is privy to any such concealment misrepresentation as aforesaid,*

he shall be liable under section 447.

(11) *If a company fails to comply with the provisions of sub-section (4), it shall be punishable with fine which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees.”*

22. The learned senior counsel placed reliance on the judgment of the *Orissa High Court in Re OCL India Limited vs. Unknown on 30th March, 1998 reported in [AIR1998ORI153]*-High Court of Orissa wherein it was held that at para 3 that section 100 of Companies Act, 1956 dealt with special resolution for reduction of share capital. In exercising its power, the court will have due regard to the interest of creditors who may consent or object to the Reduction.

*“3. Section 100 of the Act deals with special resolution for reduction of share capital. In exercising its power, the Court will have due regard to the interests of creditors, who may consent or object to the reduction. For a company to reduce its share capital in any manner as set out in Section 100, it must have power given to it under its articles to do so. Subject to confirmation by the Court as required under Section 101 of the Act, a Company may, if authorised by its articles, **effect a reduction of its share capital in any way which it may think fit by special resolution, including in particular any of the following ways:***

- (1) it may reduce or altogether extinguish the liability on any unpaid or partly paid-up shares;*
- (2) it may, by reducing the face value of any shares or otherwise, cancel any paid-up share capital which is lost or cancel It to the extent to which the reis found deficiency in available assets;*
- (3) **it may pay off any paid-up share capital** which is found to be in excess of the capital requirements of the company.*

Reduction of capital in the following ways is within the Act:

- (1) *diminishing the nominal amount of the shares so as to leave as less sum unpaid;*
- (2) *diminishing the nominal amount of any shares by writing off or repaying paid up capital;*
- (3) *diminishing the nominal amount by combining both (1) and (2);*
- (4) ***diminishing the number of shares by extinguishing the existing liability on certain shares, writing off or repaying the whole amount paid-up there on and cancelling them. The statute has not prescribed the manner in which the reduction is to be carried out nor has it prohibited any method of effecting that object per Lord Herschell, L.C. in British American Trustee and Finance Corporation v. Couper, 1894 AC 397 at page 405, quoted with approval by Lord Reid in Re: Westburn Sugar Refineries Ltd., (1951) 1 All ER 881 at page 885 which added that 'paying off capital can be done otherwise than by payment of money'. Important though its task is to see that the procedure by which a resolution is carried through, is formally correct and that creditors are not prejudiced; it has the further duty of satisfying itself that the scheme is fair and equitable between the different classes of shareholders. What then is the duty of the Court in considering the matter of this kind? In the first place, the interest of creditors must be safe guarded, but here that has been done.***

Secondly, the interests of shareholders may have to be considered but, in the case, there has been no opposition by any share holder at any time and it is difficult to see how there could be any prejudice to any single shareholder. Thirdly, there is the public interest to consider.”

23. *The learned senior counsel placed reliance on the judgment of the Calcutta High Court in **Bata Properties Limited (Company Application No. 300 of 1995)**, the Hon'ble **Calcutta High Court** allowed the Petition where in immovable property was transferred to the shareholder on capital reduction. The Petition contained the following Resolution:*

“Resolved that subject to confirmation by the Court, the share capital of the Company now consisting of Rs.8,85,10,000/- divided into 88,51,000 equity shares of Rs.10 each fully paid up be reduced to Rs.4,85,10,000/- divided into 48,51,000 equity shares of Rs. 10 each fully paid up by retransfer of the immovable property of the Company comprised in premises No. 30, Shakespeare Sarani, Calcutta700017 to Bata India Limited and/ or its nominees.”

24. *The learned senior counsel placed reliance on the judgment of the NCLT. Mumbai Bench, in **Vodafone India Limited [Company Petition No.407 of 2017]-NCLT, Mumbai Bench-17thMay, 2018***

The Hon’ble Mumbai Bench passed an Order confirming the Reduction of share capital and approving Form of Minutes in this case, wherein the Petitioner Company cancelled equity shares held by the members and distributed in consideration shares of another Company held by the Petitioner Company. The ‘Form of Minutes’ read as follows:

*“17 The issued and paid-up equity share capital of Vodafone India Limited (the" Company"),is hence forth reduced from Rs.28,132,958,230 (Rupees Twenty Eight Billion One Hundred Thirty Two Million Nine Hundred Fifty Eight Thousand Two Hundred Thirty) divided into 2,813,295,823 (Two Billion Eight Hundred Thirteen Million Two Hundred Ninety Five Thousand Eight Hundred Twenty Three) equity shares of Rs.10 (Rupees Ten) each to Rs.15,01,746,520 (Rupees Fifteen Billion Eleven Million Seven Hundred Forty Six Thousand Five Hundred Twenty) divided into 1,501,174,652 (One Billion Five Hundred One Million One Hundred Seventy Four Thousand Six Hundred Fifty Two) equity shares of Rs.10 (Rupees Ten) each, to be effected by cancelling an aggregate of 7,372,727,171 (One Billion Three Hundred Twelve Million One Hundred Twenty One Thousand One Hundred Seventy One) equity shares of Rs.10 (Rupees Ten) each of the Company allocated among the shareholders pro rata to their shareholding in the Company, and **distributing in consideration therefor, an aggregate of 500,504 (Five Hundred Thousand Five Hundred Four)***

equity shares of Re.1(Rupee One) each held, directly or beneficially, by the Company in Indus Towers Limited to the shareholders of the Company pro rata to their shareholding in the Company."

- (a) The Petitioner Company respectfully submits that in the case of **Bata Properties Limited (Company Application No. 300 of 1995), the Hon'ble Calcutta High Court** allowed the Petition where in immovable property was transferred to the shareholder on capital reduction. The Petition contained the following Resolution:

"Resolved that subject to confirmation by the Court, the share capital of the Company now consisting of Rs.8,85,10,000/-divided into 88,51,000 equity shares of Rs.10each fully paid up be reduced to Rs.4,85,10,000/-divided into 48,51,000 equity shares of Rs. 10 each fully paid up by retransfer of the immovable property of the Company comprised in premises No. 30, Shakespeare Sarani, Calcutta700017 to Bata India Limited and/ or its nominees."

- (b) **Farm Enterprises Limited (Company Scheme Petition No. 90 of 2016 connected with Company Summons for Direction No. 123 of 2016) High Court of Bombay – Exhibit D (Pages62 to 66 of this Submission)**

The Petitioner Company had cancelled and extinguished equity shares held by the members of the Petitioner Company and in lieu of every share cancelled, the Petitioner Company transferred one listed equity share of Reliance Industries Limited. The relevant extract is reproduced as hereunder:

"4. The learned Counsel for the Petitioner Company submits that Article 57 of the Articles of Association of the Petitioner Company empowers the Petitioner Company to reduce its share capital by passing a Special Resolution as prescribed by the Act in any manner and in accordance with the provisions of the Act and the Rules and the Petitioner

*Company having passed Special Resolution being Exhibit“ E” to the Company Scheme Petition, with requisite majority by means of Postal Ballot, results of which Postal Ballot were declared on 24thDecember 2015, approving the reduction of share capital of the Petitioner Company from Rs.133,33,35,540/- divided into 13,33,33,554 equity shares of Rs.10/-each to Rs.132,47,26,510/- divided into 13,24,72,651/-equity shares of Rs.10/-each and that **such reduction shall be effected by cancelling and extinguishing 8,60,903 fully paid equity shares of Rs.10/-each held by the members of the Petitioner Company, (other than the Company’s Holding Company and Associate Entities) and in lieu thereof the Petitioner Company shall transfer to each shareholder on the Record Date (other than the Holding Company and Associate Entities), one equity share of the face value of Re. 10/ -fully paid – up of Reliance Industries Limited for everyone equity share of face value of Re.10/ -fully paid - up of the Petitioner Company and in view of the averments made in paragraph 15 and 20 of the Company Scheme Petition, the procedure prescribed under Section 101(2) of the Companies Act, 1956 was dispensed with vide Order dated 12th February 2016 passed in Company Summons for Direction No.123 of 2016.”***

**(c) Vodafone India Limited
[Company Petition No.407 of 2017]–NCLT, Mumbai Bench–
17th May, 2018 – Exhibit E (Pages 67 to 75 of this
Submission)**

The Hon’ble Mumbai Bench passed an Order confirming the Reduction of share capital and approving Form of Minutes in this case, wherein the Petitioner Company cancelled equity shares held by the members and distributed in consideration shares of another Company held by the Petitioner Company. The ‘Form of Minutes’ read as follows:

“17 The issued and paid-up equity share capital of Vodafone India Limited (the "Company"), is

henceforth reduced from Rs.28,132,958,230 (Rupees Twenty Eight Billion One Hundred Thirty Two Million Nine Hundred Fifty Eight Thousand Two Hundred Thirty) divided into 2,813,295,823 (Two Billion Eight Hundred Thirteen Million Two Hundred Ninety Five Thousand Eight Hundred Twenty Three) equity shares of Rs.10 (Rupees Ten) each to Rs.15,01,746,520 (Rupees Fifteen Billion Eleven Million Seven Hundred Forty Six Thousand Five Hundred Twenty) divided into 1,501,174,652 (One Billion Five Hundred One Million One Hundred Seventy Four Thousand Six Hundred Fifty Two) equity shares of Rs.10 (Rupees Ten) each, to be effected by cancelling an aggregate of 7,372,727,171 (One Billion Three Hundred Twelve Million One Hundred Twenty One Thousand One Hundred Seventy One) equity shares of Rs.10 (Rupees Ten) each of the Company allocated among the shareholders pro rata to their shareholding in the Company, and **distributing in consideration therefor, an aggregate of 500,504 (Five Hundred Thousand Five Hundred Four) equity shares of Re.1(Rupee One) each held, directly or beneficially, by the Company in Indus Towers Limited to the shareholders of the Company pro rata to their shareholding in the Company.**"

25. The learned counsel also relied upon the judgments of High Court of Madras which are reproduced as below;

(a) Shantha Rangarajan And Others vs Commissioner of Income-Tax[19952015ITR204Madras]- 7th September, 1994 – High Court of Madras [Exhibit F1] (Pages 76 to 79 of this Submission) In this case also, ‘Property’ in addition to payment of money were distributed in lieu of reduction of share capital, to the Shareholder of the Company. The facts of the case read as follows:

*“2. These tax cases relate to various assessment years. The case of the assessee, Sri N. Govinda rajan alias N.Ravi (inTaxCaseNo.297of1981), for the assessment year 1971-72 may be taken as a typical case, which is common for all the assessees. He was a shareholder in Kasturi Estates Pvt. Ltd. **The company effected a reduction in its share capital on May8, 1962, after getting the requisite sanction of the***

High Court. *The High Court, by order dated April 20, 1962, sanctioned the reduction of capital of the company as resolved on and effected by the special resolution passed at a next extraordinary general meeting of the said company held on November 30, 1961, to reduce the share capital of the said company. Shri N. Govinda rajan alias N. Ravi held 135 equity shares of Rs.1,000 each in Kasturi Estates Pvt. Ltd. Since the company effected reduction of its capital by Rs. 790 per share, the value of the assessee's holding was reduced by Rs.790x135, i.e., Rs.1,06,650. An amount of Rs.1,06,650 was to be returned to the assessee in consequence of the reduction of capital in respect of 135 equity shares held by him. Towards this reduction of capital and return of money as per the order of the High Court referred to above, the assessee obtained cash of Rs.60,683 and the following assets. The book value of the assets came, it would appear, to Rs. 45,967 (Rs. 1,06,650 minus Rs. 60,683) while the market value as per wealth-tax assessment is at the figures against each item:*

Rs.	
1. Land with shed attached Cathedral Road 12-659 grounds	98,875
2. Land without houses measuring 8.2131 grounds in Mowbrays Road land 20-545 grounds	1,16,480
3. Farmhouse and land 21 grounds 659 sq.ft.	2,41,419
4. Kasturi House and land area 5.255 grounds (Ooty)	75,000

In this case also, 'Property' in addition to payment of money were distributed in lieu of reduction of share capital, to the Shareholder of the Company.

- (a) The learned senior counsel also upon the judgment of Hon'ble Supreme Court in the case of **Commissioner of Income Tax, Madras Vs G. Narasimhan (Died) By Heirs Kantha Narasimhan vs Ors. on 14th December, 1998**, the facts stated above in regards to the Reduction in Share Capital of M/s. Kasthuri Estates Private Limited were reiterated as follows:

“At all material times, the respondent who is the assessee was a shareholder in M/s. Kasthuri Estates (Pvt.) Ltd., Madras. During the accounting period relevant to the assessment year 1963-64, the assessee held 70 shares in M/s. Kasthuri Estates (Pvt.) Ltd- The face value of each share was Rs.1,000/, During the said accounting period, the said company passed a resolution to reduce its capital. The procedure prescribed under the Companies Act for the reduction of share capital was undergone. **An appropriate order was obtained from the court. The reduction was given effect on and from 20.5.1962.** As a result, the face value of the shares in the company was reduced from Rs. 1,000/each to Rs.210/each. **As a result, of this reduction, there was a pro rata distribution of some properties of the company and payment of money to the shareholders, including the assessee.**”

- (b) The learned senior counsel also upon the judgment of **the Commissioner of Income Tax vs P. P. Thomas [(1999) 235 ITR 191 (Ker)]: High Court of Kerala - 13th November, 1997 [Exhibit G] (Pages 85 to 86 of this Submission)**

In this case also, ‘Land’ was transferred in lieu of reduction of share capital, to the Shareholder of the Company. The facts of the case read as follows:

“2. The applicant before us is the Commissioner of Income-tax, Trivandrum, and the respondent is the assessee. **The assessee is an individual who surrendered 148 shares held by him in Cavunal Rubber Estate (P.) Limited, and received land belonging to the company in lieu of such surrender worth Rs.1,46,200.** The AO took the view that what is received by the assessee would constitute "dividend" within the meaning of s. 2(22)(d) and surrender of 148 shares and receiving the lands thereon would constitute "transfer" and therefore would be liable to tax”.

26. Upon conjoint reading of the provisions of law under section 66 of the Companies Act, and precedent relied upon the learned senior counsel, it can be said that it is just an equitable that the petitioner company be allowed to reduce its capital and transfer part of the property as envisaged in the proposed reduction. The observations and the objections of the RD is that this amounts to selective reduction is no more *res integra* and has been considered in numerous decisions by the coordinate bench of this Tribunal and by *the Delhi High Court in the case of Reckitt Banckiser (India Ltd) reported in 2005122DLT612 passed by Justice A K Sikri* has categorically held that it is settled law that question of reduction of share capital is treated as a matter of domestic concern and the decision of majority will prevail.
27. Further the Petitioner company has also field the rejoinder and have dealt with the observations of the RD. The Learned Senior Counsel for the Petitioner Company submits that the Petitioner Company has filed an Affidavit-of-Rejoinder dated 26th November 2020 with this Hon'ble Tribunal and also the Regional Director to allay the reservations expressed by the Regional Director in Paragraph 7B, in the following terms:
- (i) The Petitioner Company does not have any secured or unsecured creditors, hence the question of interest of creditors does not arise.
 - (ii) The Petitioner Company has undertaken that interest of all stakeholders of the Petitioner Company and Government Revenues are protected as well as statutory dues are paid off.
 - (iii) The Petitioner Company has undertaken that it shall comply with all the applicable provisions of the Income Tax Act, 1961 and all tax issues, if any, arising out of the Petition will be met and answered in accordance with the law and further, the decision of the Income Tax Authority will be binding on Petitioner Company, subject to right of appeal available to the Petitioner Company under

applicable laws. Also, the approval of the Petition by this Tribunal may not deter the Income Tax Authority to scrutinize the tax return filed by the Petitioner Company after giving effect to the proposed reduction.

28. Therefore, this Bench is of the considered view that reduction of share capital is just an equitable in view of the various decision of the various courts and in terms of the section 66 of the Companies Act.
29. The application for reduction of share capital is allowed subject to the direction of the herein in above.
30. All concerned regulatory authorities to act upon production of certified copy of the order issued by the Joint Registrar, NCLT, Mumbai Bench.
31. The Petitioner Company to publish notices about registration of order and minutes of reduction by the concerned Registrar of Companies, Mumbai, in two newspapers, namely '*Free Press Journal*' in English and '*Navshakti*' in Marathi, both having circulation in Mumbai, within 30 days of registration.

Form of Minutes

“The paid-up share capital of Chawla Brothers Private Limited is henceforth Rs. 5,46,12,500/- (Rupees Five Crores, Forty-Six Lakhs, Twelve Thousand and Five Hundred Only) divided into:

- a) Equity Share Capital of Rs. 21,12,500/- (Rupees Twenty-One Lakhs, Twelve Thousand and Five Hundred Only) comprising of 21,125/- (Twenty-One Thousand, One Hundred and Twenty-Five) Equity Shares of Rs. 100/- (Rupees Hundred Only) each by cancelling and extinguishing a sum of Rs.26,88,500/- (Rupees Twenty-Six Lakhs, Eighty-Eight

Thousand and Five Hundred Only) comprising of 26,885/- (Twenty-Six Thousand, Eight Hundred and Eighty-Five) Equity Shares of Rs. 100 (Rupees Hundred Only) each from Rs. 48,01,000/- (Rupees Forty-Eight Lakhs and One Thousand Only) comprising of 48,010/- (Forty-Eight Thousand and Ten Shares) Equity Shares of Rs. 100 (Rupees Hundred Only) each, and in lieu of the cancelled equity shares transfer to M/s Prasun Spaces LLP, Shareholder of the Petitioner Company, part of the Property (as defined in Para 2.5 of The Scheme) bearing CTS No. 13A having an area of 7,903.93 Sq. Mts., part of the Property (as defined in Para 2.5 of The Scheme) bearing CTS No. 13A-1 having an area of 31.16 Sq. Mts. and Industrial Structure on the Plot, and remitting a sum of Rs. 388.87/- (Three Hundred, Eighty-Eight Rupees and Eighty-Seven Paise) per equity share cancelled and extinguished

- b) 1% Redeemable Preference Share Capital of Rs. 5,25,00,000/- (Rupees Five Crores and Twenty-Five Lakhs Only) comprising of 5,25,000/- (Five Lakhs and Twenty-Five Thousand) 1% Redeemable Preference Shares of Rs. 100/- (Rupees Hundred Only) each by cancelling and extinguishing a sum of Rs. 5,25,00,000/- (Rupees Five Crores and Twenty-Five Lakhs Only) comprising of 5,25,000 (Five Lakhs and Twenty-Five Thousand) 1% Redeemable Preference Shares of Rs. 100/- (Rupees Hundred Only) each from Rs. 10,50,00,000/- (Rupees Ten Crores and Fifty Lakhs Only) comprising of 10,50,000/- (Ten Lakhs and Fifty Thousand Only) 1% Redeemable Preference Shares of Rs. 100/- (Rupees Hundred Only) each and in lieu of the cancelled 1% Redeemable Preference Shares transfer to M/s Prasun Spaces LLP, shareholder, part of the Property (as defined in Para 2.5 of The Scheme) bearing CTS No. 13A having an area of 855.57 Sq. Mts.”

Sd/-
Chandra Bhan Singh
Member (Technical)

Sd/-
Suchitra Kanuparthi
Member (Judicial)