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Restructuring Share Capital: Understanding Section 66 of the Companies Act, 2013

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Capital reduction is a key mechanism under the Companies Act, 2013 that enable a company to realign share capital as per its financial situation and strategic needs. Governed by Section 66 of the Act and The National Company Law Tribunal (Procedure for reduction of share capital of Company) Rules, 2016, the process involves judicial scrutiny to ensure transparency and compliance with regulatory and creditors interest. While the statutory framework provides technical clarity, the practical application of capital reduction often intersects at times with broader regulatory regime, including the Foreign Exchange Management Act (FEMA) and the Foreign Contribution Regulation Act (FCRA). These intersections become particularly significant in the case of not-for-profit companies and entities with foreign investment. The recent decision of the National Company Law Tribunal (NCLT) in LBR Foundation India serves as a critical illustration of how procedural compliance, valuation standards, and regulatory clearances can affect the permissibility of capital reduction. This article undertakes an analytical overview of the legal and procedural framework for capital reduction in India, the judicial interpretations shaping its application and the compliance requirements under various intersecting laws.

What is Reduction of Share Capital?

Capital reduction refers to a process by which a company reduces its share capital (apart from buyback and redemption of preference shares). The reduction of share capital means reduction of issued, subscribed or paid-up share capital. It can also be regarded as cancellation of uncalled capital. It is often carried out to eliminate accrued losses, cancel unutilized shares and return money to shareholders. Section 66 of the Companies Act, 2013 lays down the framework for reduction of share capital in India. The process requires the approval of the shareholders by passing a special resolution, discharging or securing claims and obtaining consent of the creditors and confirmation of the NCLT. Upon approval by the Tribunal, the capital reduction is reflected in the books of the company. Previously, reduction of share capital was governed by Section 100 to 104 of the Companies Act, 1956. According to the Old Act, the reduction was subjected to the approval of the High Court. Under the New Act, the said powers of court have been transferred to the NCLT, resulting in a more streamlined approach.

Statutory Framework of Section 66:

Section 66 of Companies Act, 2013 lays down the procedure by which a company limited by shares or limited by guarantee and having a share capital may reduce its share capital. This reduction can be carried out in numerous ways upon passing a special resolution, like extinguish or reduce the liability on any of its shares in respect of the share capital not paid-up, 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. The Tribunal, upon receiving an application for capital reduction is required to intimate the Central Government, the Registrar of Companies (ROC), Securities Exchange Board of India (SEBI) (in case of listed companies) and the creditors of the company and ask for their representations, if any, to be submitted within a period of three months from the date of receipt of notice. The accounting treatment of the reduction must be 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 to be filed with the Tribunal.

After considering these representations and being satisfied that the reduction will not negatively affect the public at large, the Tribunal approves the reduction of the capital of the company. The company shall deliver a certified copy of the order of the Tribunal and of a minute approved by the Tribunal 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. Further, this Section states that a Company that has defaulted repayment of and deposits accepted by it, either before or after the commencement of this Act, or the interest payable thereon is not permitted to apply for reduction of share capital.

Procedure for Reduction of Share Capital:

The procedure for reduction of share capital is detailed in Section 66 of the Companies Act, 2013 and is supplemented by the National Company Law Tribunal (Procedure for reduction of share capital of Company) Rules, 2016, which detail the forms and timelines. The procedure emphasizes on transparency, stakeholder protection and efficient compliance. It is necessary that the Articles of Association contain specific provision regarding reduction of share capital. Additionally, the Company must ensure that there is no default or arrears in the repayment of any deposits accepted by the company or the interest payable thereon. The procedure is as follows:

- ***i.*** **Passing Special Resolution:** The Board of Directors of the Company intending to undergo reduction of share capital should call for a general meeting of shareholders. A Special Resolution consisting of the approval of at least 75% of the shareholders for the proposed reduction must be passed.
- ***ii.*** **Application to NCLT:** An application to the NCLT confirming a reduction of share capital shall be filed in form No. RSC-1 along with prescribed fees, accompanied with a list of creditors duly certified by the Managing Director, Auditor's Certificate verifying the creditor's list and accounting treatment and Auditor's Certificate and Declaration by a director of the Company that the Company is not in arrears of repayment of deposits or the interest thereon, as on the date of filing the application.
- ***iii.*** **Issue of Notice:** The NCLT shall issue notice within fifteen days of submission of application, to the Central Government, Registrar of Companies and SEBI (in case of listed companies) in Form No. RSC-2 and to the creditors in Form No. RSC-3 seeking their representations and objections.
- ***iv.*** **Issuing Public Notice:** The Company shall, within seven days from the date on which directions are given, publish a notice in Form No. RSC-4 in a leading English and vernacular language newspapers and on the website of the company seeking objections from the creditors and intimating about the hearing date.
- ***v.*** **Filing an Affidavit:** The Company shall file an affidavit in Form No. RSC-5 within seven days of issue of the notice confirming the publication of the same in the newspapers and the company website.
- ***vi.*** **Confirmation by NCLT:** Upon being satisfied that the proposed reduction would not be detrimental to anyone's interest and after considering representations and objections raised, the Tribunal issues an order confirming the reduction and approving the minute in Form No. RSC-6.
- ***vii.*** **Filing with the Registrar:** The Company shall file the Tribunal's order approving the reduction and minutes with the Registrar of Companies within thirty days from the receipt of the copy of the order. The Registrar shall register the same and issue a certificate in Form No. RSC-7. The reduction will become effective only after the issue of certificate by the Registrar.

Case Laws on Reduction of Share Capital:

- ***i.*** In the matter of ***LBR Foundation India*, In re [2025] 173 taxmann.com 339 (NCLT –Chennai)** before the NCLT Chennai Bench-I, the Tribunal dismissed the petition for capital reduction under Section 66 of the

Companies Act, 2013 filed by LBR Foundation India, a Section 8 company seeking to cancel shares issued against foreign contributions received prior to obtaining FCRA registration. The company had violated Section 11 of Foreign Contribution (Regulation) Act, 2010 by accepting funds from its overseas parent company in a non-designated account, failed to adhere to the sixty day time limit of share allotment according to the Companies Act, 2013 and failed to initiate adjudication under Section 454 of the Companies Act, 2013. Further the previous capital reduction of the Company remained unfinished due to certain FEMA issues and the proposed valuation was below face value without adequate reasoning. The Tribunal held that the Company cannot return the foreign contribution to its overseas parent company under the guise of reduction of share capital and escape its responsibilities. Section 66 cannot be used to bypass the applicable provisions of FCRA, FEMA and RBI.

ii. In ***Bharat Diamond Bourse*, In re [CP NO. 175 (MB) of 2021, dated 12-12-2023],** the NCLT Mumbai Bench-V approved a petition under Section 66 of the Companies Act, 2013 for reduction of share capital. Despite objections from the Regional Director regarding potential nonconformity of framework of law prescribed under Section 8 of the Act and concerns over selective reduction, the Tribunal upheld that capital reduction is a domestic matter, permissible "in any manner" under Section 66. selective reduction has legal validity as long as it is transparent and not disguised as a buy-back.

iii. In the case of ***Philip India Ltd.*, In re [2024] 168 taxmann.com 141 (NCLT - Kol.)** before the NCLT Kolkata Bench, the Tribunal dismissed a petition where the said company sought to reduce its share capital by cancelling 3.87% of equity shares held by minority shareholders. The petitioner company took the decision to provide exit to the public shareholders post delisting and offered a 24 % premium over the fair value of the shares. The Tribunal held that as the proposed capital reduction does not fall under the scope of Section 66(1)(a) or 66(1)(b) of the Companies Act, 2013 as it did not aim to extinguish unpaid capital or cancel any paid-up share capital lost or underrepresented by available assets. Instead, this petition has been filed predominantly for buying out the minority shareholders who are large in number compared to the promoter shareholder, with the real intention of a selective buyback governed under Section 68 of the Act. This case reiterated the legal distinction between capital reduction and buyback of shares.

iv. In the matter of ***Ulundurpet Expressways Pvt. Ltd.* v. *Regional Director* [Company Appeal (AT) No. 53 of 2024, dated 6-1-2025],** the NCLAT overturned NCLT Mumbai's decision to dismiss a petition under Section 66 of the Act. The Company had proposed to cancel 16,76,96,382 equity shares valued at INR 10 each, compensate shareholders at INR 11.33 per share, aggregating to INR 1,900 crore and restructure the pay out as an unsecured loan, repayable over 5 years, subject to specific terms with a view to utilize surplus cash effectively. The NCLT had rejected the scheme on the grounds that the proposed reduction relied on projected future cash flows rather than the current surplus, which did not comply with Section 66(1)(b)(ii) of the Act and further, converting reduced capital into unsecured loans would breach the provisions under the Foreign Exchange Management Act (FEMA) and External Commercial Borrowings (ECB) regulations. The NCLAT overturned this view holding that Section 66 grants companies the power to reduce share capital "in any manner" as long as creditors and stakeholder's interests are protected and their consent is approved.

Conclusion:

Section 66 of the Companies Act, 2013 provides a structured and comprehensive framework for reduction of share capital with emphasis on stakeholders and creditors' protection. It further allows for reduction "in any manner" subject to Tribunal's approval, thereby, allowing companies to restructure their share capital as per their needs within the scope of the section. Section 66 emphasizes on compliance with the procedures laid down in the Act and the Rules and fairness to the creditors. The NCLT plays an important role ensuring the same. The Tribunal has also clarified that Section 66 cannot be used to evade Section 68 by disguising buyback as capital reduction and that selective capital reduction is valid if done with transparency and bona fide interest of the stakeholders. Transparency, fairness and procedural compliance continue to be the essential criteria for Tribunal's approval for reduction of share capital. Section 66, which was notified by the Ministry of Corporate Affairs (MCA) in 2016 has proven to be a powerful and essential tool for corporate restructuring.

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