

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH C-IV**

**C.P. 327/MB/2021**

*In the matter of  
Under Section 66 of the  
Companies Act, 2013 and the  
Rules framed thereunder;*

*And*

*In the matter of  
Reduction of Equity Share Capital  
of  
**IDBI BANK LIMITED**  
("The Petitioner Company")*

IDBI BANK LIMITED  
[CIN: L65190MH2004GOI148838]

..... Petitioner Company

Order Pronounced on : **29.03.2023**

***Coram:***

Shri Prabhat Kumar  
Hon'ble Member (Technical)

Shri Kishore Vemulapalli  
Hon'ble Member (Judicial)

*Appearances (via videoconferencing):*

For the Petitioner Company:

Mr. Dammalapti Srinivas, Senior Counsel, Counsel Mr. Rohit Gupta, Counsel a/w Mr. V V S N Raju & Mr. Omkar Kelkar, Advocates and Shri. S. N. Vishwanathan i/b M/s. S N Ananthasubramanian & Co., PCS.

For the Regional Director: (WR):

Ms. Rupa Sutar, Deputy Regional Director.

**ORDER**

**Per: Kishore Vemulapalli, Member (Judicial)**

1. The Court convened by video-conference today.
2. The present Petition is for confirmation of a Special Resolution passed for Reduction of Share Capital arising from Setting-Off of Accumulated Losses of Rs. 45396,18,36,251/- (Rupees Forty-Five Thousand Three Hundred and Ninety-Six Crore Eighteen Lakh Thirty-Six Thousand Two Hundred and Fifty-One only) from the Credit Balance of the Securities Premium Account of Rs. 50719,74,81,752/- (Rupees Fifty Thousand Seven Hundred and Nineteen Crore Seventy-Four Lakh Eighty-One Thousand Seven Hundred and Fifty-Two only) as on April 01, 2021, as reproduced herein below: -

*“RESOLVED THAT pursuant to Sections 52 and 66 of the Companies Act, 2013, Section 17 (2) of the Banking Regulation Act, 1949 (BR Act), Regulations 11 and 37 of the SEBI (LODR) Regulations, 2015 and other applicable statutory/regulatory provisions, if any, and subject to the approvals of National Company Law Tribunal (NCLT) and such other authorities as may be necessary in this regard, consent of the members of the Bank be and is hereby accorded to the Scheme of Reduction of Share Capital for setting off accumulated losses aggregating to Rs.45396.18 crore by utilizing the balance of Rs.50719.75 crore standing to the credit of Securities Premium Account as on April 01, 2021 and all related actions to be carried out for giving effect to the above proposal, as recommended by the Audit Committee, the Board, Independent Directors and approved by SEBI/Stock Exchanges vide their observation Letter/NOC dated April 27, 2021 and by RBI vide their letter dated June 14, 2021 in this regard.*

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*RESOLVED FURTHER THAT, for the purpose of giving effect to the above resolution, the Board or a Committee of the Board for the said purpose be and is hereby authorized to do all such acts, deeds, matters and things including delegating authority to Executives of the Bank as it may at its absolute discretion deem necessary or desirable for effectively implementing the resolution and to settle any questions, difficulties or doubts that may arise in this regard as it may in its absolute discretion deem fit.*

OR

*Scheme of Reduction of Capital for setting off accumulated losses aggregating to Rs.45396.18 crore by utilizing the balance of Rs. 50719.75 Crores standing to the credit of Securities Premium Account as on April 01, 2021 and all related actions to be carried out for giving effect to the proposal.*

3. The Learned Counsel for the Petitioner Company submits that the Rationale and the Purpose of the Scheme is as under: -
  - a. The Authorised Share Capital of the Petitioner Company/Bank as on 31st March, 2021 is Rs. 25000,00,00,000/- (Rupees Twenty-Five Thousand Crore only) & the Issued, Subscribed & Paid-Up Share Capital of the Petitioner Company/Bank as on 31<sup>st</sup> March, 2021 is Rs. 10752,40,21,750/- (Rupees Ten Thousand Seven Hundred & Fifty-Two Crore Forty Lakh Twenty-One Thousand Seven Hundred and Fifty only) consisting of 1075,24,02,175 Shares of Rs. 10 each. The Bank has only one class of Equity Shares. The Equity Shares of the Petitioner Company/Bank are listed on BSE Limited and National Stock Exchange of India Limited.
  - b. As per the Articles of Association of the Petitioner Company/Bank, the Petitioner Company/Bank is authorized to reduce the share capital of the Bank in the manner

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provided in Section 66 of the Companies Act, 2013. The Article 8 of the Articles of Association of the Petitioner Company/ Bank reads as under:

*“8. The Company may, from time to time, by Special Resolution, subject to confirmation by the Central Government and subject to the provisions of sections 52 & 66 of the Companies Act, 2013, reduce its shares or any share premium account in any manner for the time being authorised by law and in particular pay off such capital on the footing that it may be called up again or otherwise.”*

- c. The Net Worth of the Petitioner Company/Bank based on the Audited Financial Statements as on 31<sup>st</sup> March, 2021 is INR Rs. 15950,92,07,237/- (Rupees Fifteen Thousand Nine Hundred & Fifty Crore Ninety-Two Lakh Seven Thousand Two Hundred & Thirty-Seven only) (excluding Revaluation Reserves and Intangible assets) which is positive.
- d. Based on the Audited Financial Statements as on 31<sup>st</sup> March, 2021 the accumulated losses of the Petitioner Company/Bank stood at Rs. 45396,18,36,251/- (Rupees Forty-Five Thousand Three Hundred and Ninety-Six Crore Eighteen Lakh Thirty-Six Thousand Two Hundred and Fifty-One only) and the Securities Premium Account stood at Rs. 50719,74,81,752/- (Rupees Fifty Thousand Seven Hundred and Nineteen Crores Seventy-Four Lakh Eighty-One Thousand Seven Hundred and Fifty-Two only).
- e. There are no qualifications, reservations or adverse remarks or disclaimers made by the Auditors in their report on the financial statements of the Petitioner Company/Bank for the year ended 31<sup>st</sup> March, 2021. There are no pending

inspections, inquiry or investigations against the Bank under the Companies Act, 2013.

- f. The Accumulated Losses have wiped off the value represented by the Share Capital of the Petitioner Company/Bank and thus, the Financial Statements presently do not reflect the correct picture of the health of the Petitioner Company/Bank. This has given rise to the need to re-adjust the relation between capital and assets and to accurately and fairly reflect the liabilities and assets of the Company in its books of accounts.
- g. Accordingly, considering the future prospects of growth and value addition to the Bank and its shareholders and also to enable the Bank to be eligible to make coupon payment of AT1 Bonds, and to raise AT1 Bonds in the near future, the Bank has proposed to re-align the relationship between its capital and its assets and the Petitioner Company/Bank believes that the Reduction of Share Capital;
- h. is the most practical and economically efficient option available to the Bank in the present scenario so as to present a true and fair view of the financial position of the Bank;
- i. will enable the Bank to represent its true financial position which would benefit Shareholders as their holding will yield better value;
- j. will place the Bank in a better position to achieve its Turnaround Plan in a time-bound manner;
- k. will enable the Bank to explore opportunities for the benefit of the Shareholders of the Bank including in the form of dividend payment as per the applicable provisions within a reasonable timeframe;

1. will enable the Bank to utilize a balance of the amount standing to the credit of its Securities Premium Account in an effective manner for the benefit of the Bank.
4. The Learned Counsel for the Petitioner further submits that there would be no effect/ impact of the Scheme on Tax Liability, on Shareholders, on Employees/ Workers, on Creditors/ Banks/ Financial Institutions, on legal Proceedings, on Conduct of Business of the Bank, nor in any manner alter, vary or affect the payment of any dues or outstanding amounts including all or any of the statutory dues payable or outstanding or envisage transfer or vesting of any of the properties and/or liabilities of the Bank to any person or entity and does not involve any conveyance or transfer of any property of the Bank or any issue of shares, as it is a Balance Sheet neutral exercise.
5. The Learned Counsel for the Petitioner further submits that all the necessary permissions/ approvals/ recommendations from the concerned Committees/ Board of Directors/ Authorities/ SEBI (through BSE & NSE) / RBI have been obtained.
6. The Learned Counsel for the Petitioner Company further submits that the Scheme will not affect the shareholding pattern of the Bank and the pre and post shareholding pattern of the Bank will remain same.
7. The Learned Counsel for the Petitioner Company further submits that the Petitioner Bank has complied with the directions pronounced by this Tribunal vide its order dated 20<sup>th</sup> October 2022.
8. Further, in response to the Notice served by the Petitioner, the Registrar of Companies and Central Government through the Office of the Regional Director (RD), Western Region, Mumbai has

filed a Report Dated 10<sup>th</sup> January, 2023 by way of an Affidavit before this Tribunal with a copy to the Petitioner Company.

9. The Regional Director has filed his Report dated 10<sup>th</sup> January, 2023 *inter alia* stating therein its observations on the Scheme as stated in para 6 and 7 of the Report and the Petitioner Company has undertaken/made following submission that:-

a. the status of complaint vide SRN I00062038 is “Closed” and the status of rest of the complaint(s) SRNs is as under: -

<b>SN.</b>	<b>SRN</b>	<b>Nature / Gist of Compliant</b>	<b>Status of the Compliant</b>
1.	I00026140	Investor lodged the complaint for non-receipt of redemption amount. He invested in IDBI USB Sr I (1992) with Folio No DDB0849157	Redemption amount of Rs.19,272/- was paid through NEFT dated July 31, 2017 into investor's A/c.
2.	I000300145	Given SRN I000300145 is not a valid SRN. Similar SRN I00030015 is valid and the same pertains to Investor's requests to GOI/RBI for revalidation of the original maturity	Reply was issued by Customer Care Centre, vide email dated April 18, 2018 wherein investor was informed that due to exercise of Call option, respective scheme has already been closed in line with the terms of the

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SN.	SRN	Nature / Gist of Compliant	Status of the Compliant
		date of IDBI Sr I (1992) bond.	Offer Document. Further the complainant had not provided the Folio number.
3.	I00036864	Investors had invested in Flexi bond (Folio No FDD138289 & DDB0699675) and approached to know the procedure to redeem the bond	Reply was issued by Customer Care Centre (CCC), vide letter dated February 28, 2019. Later the Redemption amount of Rs. 17,936/- & Rs. 20,552/- was paid through NEFT dated April 25, 2019 & June 03, 2019 respectively into investor's A/c's
4.	I00059239	Investor had invested in IDBI USB Series I (1992) Bond (Folio No.DDB0457521) and wanted the redemption payment against the said Bond.	Reply was issued by Customer Care Centre (CCC), vide letter dated April 20, 2021 and also the Redemption amount of Rs. 22,082/- was paid through NEFT dated August 31, 2021 into investor's A/c
5.	I00070489	Investor requested	Reply was issued by



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SN.	SRN	Nature / Gist of Compliant	Status of the Compliant
		for redemption status of Flexi Bond 96 (Folio No DDB1290415)	Customer Care Centre, vide letter dated January 29, 2022 wherein investor was informed that redemption amount of Rs. 19,909/- has already been paid to the investor vide NEFT dated November 12, 2021.
6.	I00075472	Complaint was for non-receipt of Bond Certificate pertaining to Flexi bond 22	Reply was issued by Customer Care Centre, vide letter dated July 01, 2022 wherein investor was advised to submit the proof regarding making payment towards Flexi bond 22, as the Folio Number/ Investment Details were not provided by the Complainant.
7.	I00075941	Investor was holding Flexi 2 Bond (Folio No FDD113127)	Reply was issued by Customer Care Centre, vide letter dated July 16, 2022

SN.	SRN	Nature / Gist of Compliant	Status of the Compliant
		wanted to know the status of the bond	wherein investor was advised to submit the KYC documents along with original bond certificate for redemption proceeds, as the said amount lay unclaimed as per the records of the Bank

In view of above, the Petitioner Company has been appropriately dealing with all the complaints i.e. all the above complaints have been either resolved or disposed of from the Petitioner Company's end. Also, considering the fact that the Petitioner Company is a highly operative Banking Company, the nature and number of complaints is very miniscule. Further, the present Petition/Scheme is only for the limited purpose to set off of Accumulated Losses as on April 01, 2021 against the balance standing to the credit of Securities Premium Account of the Bank as on the said date and does not have any impact on the "Going Concern" status of the Bank. In any case, the Petitioner Company undertakes to appropriately deal with the said complaints as and when decided by the ROC/MCA.

- b. the present case does not result in Reduction of Share Capital and hence the question of any impact on interest of the minor shareholders does not arise. Further, post the set off of Accumulated Losses as on April 01, 2021 against the balance standing to the credit of Securities Premium Account of the

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Bank as on the said date, the Net Worth of the Petitioner Company would become positive and hence the question of any impact on interest of the Creditors/Stakeholders does not arise. In any case, the Petitioner Company undertakes that interest of the Creditors and minority Shareholders/Stakeholders will be protected.

- c. the proposed set off of Accumulated Losses as on April 01, 2021 against the balance standing to the credit of Securities Premium Account of the Bank as on the said date is other than the purpose of utilization of the Securities Premium that has been prescribed under Section 52 (2) of the Companies Act, 2013, as provided under Section 52 (1) of the said Act, shall be construed as a reduction of share capital under provisions of Section 66 of the said Act. The Petitioner Company submits that there are precedents where the NCLT has confirmed the Reduction of Share Capital by setting off the accumulated losses against the balance standing to the credit of Securities Premium Account viz. Order of Mumbai Bench of the NCLT in the matter of Indian Oiltanking Limited (C.P. No. 1150/66/MB/2020) dated 28th January, 2021 and Order of Bengaluru Bench of the NCLT in the matter of Subex Limited (C.P. No. 88/BB/2020) dated 23rd September, 2020.

There are precedents where similar sized Public Sector Banks (“PSBs”) have set-off/ are in the process of setting-off accumulated losses against the balance standing to the credit of Securities Premium Account in accordance with Clause 21 of the Nationalized Banks (Management and Miscellaneous Provisions) Scheme, 1970, inserted vide Notification CG-DL-E-23032020-218862 issued by the Ministry of Finance on 23rd March, 2020. PSBs which have set-off/ are in the process of setting off accumulated losses as aforesaid are as under:

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Sr. No.	Bank
01	Bank of Baroda
02	Bank of India
03	Bank of Maharashtra
04	Canara Bank
05	Central Bank of India
06	Indian Bank
07	Indian Overseas Bank
08	Punjab National Bank
09	Punjab and Sind Bank
10	UCO Bank
11	Union Bank of India

As PSBs are not governed by the provisions of Companies Act, 2013 and the rules made thereunder, the said set-off did not require confirmation of the Hon'ble NCLT and was done by passing a Special Resolution of their respective members after obtaining approval of the Reserve Bank of India.

In view of above, it is stated that the proposed reduction of capital is fulfilling the requirements of Section 52 of Companies Act, 2013. In any case, the Petitioner Company undertakes to comply with all the applicable provisions of Companies Act, 2013 while giving effect to the reduction of capital.

- d. the Petitioner Company undertakes that interest of all the Creditors, Stakeholders and Government Revenue will be protected and statutory dues will be duly discharged, wherever applicable.
- e. the Petitioner Company undertakes to comply with all the applicable provisions of the Income Tax Act and all tax issues arising out of proposal for reduction of share capital will be met and answered in accordance with law.

the Petitioner Company clarifies that the Company is not a

Non-Banking Finance Company but a Banking Company as mentioned in the Petition and as required by law, the Petitioner Company has already obtained the following, prior to seeking the approval of the Shareholders and Filing of the Petition with the Hon'ble NCLT:

- i) approval of Reserve Bank of India;
- ii) approval of Securities Exchange Board of India (SEBI) through the BSE Limited and the National Stock Exchange of India Limited

Nonetheless, the Petitioner Company undertakes to comply with all applicable provisions in order to comply with the requirements of RBI, SEBI, BSE and NSE, wherever required.

10. That the Petitioner Company has filed reply with the Regional Director on 02.03.2023. After consideration of the reply of the Petitioner Company, the Regional Director appeared through its representative and submitted that their observations/ objections have been satisfactory explained by the Petitioner Company or acceptable to them. Hence, the Regional Director does not have any objection to the proposed scheme of reduction. Further, the Regional Director confirmed that there is no need of filing any supplementary Report.
11. The Petitioner Company will comply with the provisions of the Income Tax Act, 1961 and that any tax implication, if any, arising out of the proposed reduction will be dealt with in accordance with law and the Income tax Department shall be at liberty to independently examine the legal contention of the Petitioner Company cited in this order.
12. We have perused the material on record and heard the counsel for the Petitioner Company. Upon consideration of the relevant facts and submissions, the Scheme of reduction of share capital

appears to be fair and reasonable and is not violative of any provisions of law and is not contrary to public interest/ policy. Petition for the reduction of share capital allowed.

13. The Petitioner Company submits that neither the Petitioner Company has received any objections from the Creditors nor has any Objector come before this Tribunal to oppose the present Petition, nor has any party challenged any averments made in the Petition.
14. The Petitioner has complied with all the statutory requirements as per the directions of this Tribunal and the Petitioner Company has filed necessary affidavit of compliance before this Tribunal. Moreover, the Petitioner Company also undertakes to comply with the statutory requirements, if any under the Companies Act, 2013 and the Rules made thereunder, as may be applicable.
15. Since the requisite statutory procedure has been fulfilled, the Petitioner Company's Petition is made absolute in terms of the prayer clause 60 of the Petition.
16. All concerned Regulatory Authorities to act on the certified copy of the order and the form of minutes forming part of the Petition, duly certified by the Deputy Registrar, National Company Law Tribunal. The Petitioner Company undertakes to file the same with the Registrar within 30 days from the date of the receipt of the order.
17. The Petitioner will publish the notices about registration of Order and Minutes of reduction by the Registrar of Companies, Mumbai in two newspapers namely i.e. "Business Standard" in English language and translation thereof in "Navshakti", in Marathi language both having circulation in Mumbai within 30 days of registration.

18. The minutes set forth hereto be and is hereby approved.

19. Ordered Accordingly.

**Form of Minutes**

“The issued, subscribed and paid-up share capital of IDBI Bank Limited is Rs.1,07,52,40,21,750 (Rupees Ten Thousand Seven Hundred and Fifty-Two Crore Forty Lakh Twenty-One Thousand Seven Hundred & Fifty only) divided into 10,75,24,02,175 Equity Shares of Rs.10/- each. At the date of the registration of this minute 10,75,24,02,175 Equity Shares of Rs. 10/- each have been issued and are deemed to be fully paid-up”.

The Securities Premium Account of IDBI Bank Limited is henceforth Rs.5323,56,45,501/- (Rupees Five Thousand Three Hundred Twenty-Three Crore Fifty-Six Lakh Forty-Five Thousand Five Hundred and One only) as reduced from Rs.50719,74,81,752/- (Rupees Fifty Thousand Seven Hundred Nineteen Crore Seventy-Four Lakh Eighty-One Thousand Seven Hundred Fifty-Two only)”.

Sd/-

**Prabhat Kumar**  
**Member (Technical)**

Sd/-

**Kishore Vemulapalli**  
**Member (Judicial)**