

ADITI TRALSHAWALA
HARSHAL BAVISKAR

Anagram Partners

aditi.t@anagrampartners.in

harshal.b@anagrampartners.in

If you have any questions regarding the matters discussed in this publication, please contact the attorney(s) listed above or call your regular contact at Anagram.

Background

The application of securities premium account funds under the Companies Act, 2013 ("**2013 Act**") continues to attract judicial attention. In its recent decision involving Modern Hi-Rise Pvt. Ltd. ("**Modern Hi-Rise Case**")¹, the Kolkata Bench of the National Company Law Tribunal ("**NCLT**") refused to permit the use of the securities premium account as retained earnings for preference share redemption. The NCLT cited insufficient retained earnings and non-permissibility of such use of amounts in the securities premium account by way of a capital reduction under Section 52(1) and Section 66 of the 2013 Act.

In the Modern Hi-Rise case, the company lacked sufficient retained earnings to redeem preference shares under Section 55. It therefore sought capital reduction by reclassifying its securities premium account as retained earnings, relying on Section 52(1) and Section 66 of the 2013 Act. The NCLT ruled that Section 52 provides a limited list of permitted uses, and rejected the adjustment to retained earnings as contrary to the 2013 Act and Indian Generally Accepted Accounting Principles ("**GAAP**"), highlighting risks of financial misrepresentation. The NCLT also rejected the auditor's certificate of compliance, finding the proposed adjustment non-compliant with both the 2013 Act and accounting standards. It is necessary to assess whether the NCLT correctly interpreted Section 52 of the 2013 Act in these circumstances.

The Statutory Framework under the 2013 Act

Section 52(1) requires that all share premium received is credited to a separate securities premium account. It further states that, unless specifically allowed under Section 52, the rules governing the reduction of share capital under Section 66 apply to the use of funds in this account as though they were paid-up share capital. Any use of the securities premium account for purposes not listed in Section 52 must comply with capital reduction requirements.

Sections 52(2) and 52(3) specify that the securities premium account can be used, without meeting capital reduction requirements, for fully-paid bonus shares, writing

¹ In Re: Modern Hi-Rise Pvt. Ltd., C.P. No. 238/KB/2024 (order dated September 9, 2025).

off preliminary or issue expenses, commissions or discounts on issue, premium on redemption of preference shares or debentures, and buy-back of securities under Section 68. Section 55 governs the issuance and redemption of preference shares, requiring redemption from profits available for dividend or fresh share proceeds, and allowing any premium payable on redemption to be met from distributable profits or the securities premium account. However, Section 55 does not define “redemption.”

Section 66 grants the NCLT broad discretion to approve any form of share capital reduction, provided there is shareholder approval by special resolution and the reduction follows prescribed accounting standards, with auditor certification required. It also entitles the Central Government, Registrar of Companies, SEBI (for listed companies), and creditors to make representations to the NCLT regarding the proposed reduction.

Critical Appraisal of the NCLT’s Approach in Modern Hi-Rise

Constructive Interpretation and Flexibility of use of the Securities Premium Account

In *In Re: Nestlé India Ltd.*², the Delhi High Court clarified that Section 78 of the Companies Act, 1956 (“**1956 Act**”) (analogous to Section 52 of the 2013 Act) does not restrict the use of the securities premium account solely to listed purposes, as such a reading would undermine flexibility and render sub-section (1) ineffective. In *In Re: Parrys Confectionery Ltd.*³, the Madras High Court allowed the securities premium account to be used for extinguishing losses and restructuring costs, stating that statutory uses simply bypass the capital reduction process; other uses are allowed if the procedures for capital reduction are followed. In *In Re: Hyderabad Industries Ltd.*⁴, the Andhra Pradesh High Court confirmed that court approval is only necessary when the account is applied for non-statutory purposes, focusing on legal compliance, authorisation in the articles, and absence of prejudice.

Consistently, NCLT benches have permitted use of the securities premium account for matters beyond Sections 52(2) and 52(3), subject to capital reduction requirements, as seen in *In Re: Transversal Tech (P) Ltd.*⁵, and *In Re: Pfizer Healthcare India Private Ltd.*⁶ The prevailing view is that Section 52 sets out specific purposes exempt from capital reduction procedure and a broader principle allowing other uses if NCLT approval and proper safeguards under Section 66 are met. The narrow approach adopted by the NCLT in the Modern Hi-Rise case contradicts this by limiting flexibility and rendering Section 52(1) ineffective. Section 66 is deliberately broad, backed by procedural safeguards including NCLT and shareholder approvals, stakeholder notifications, the right to representation, and auditor certification.

In the Modern Hi-Rise case, the NCLT found that reclassifying the securities premium account as retained earnings violated Indian GAAP and could misrepresent financial health, overriding the company auditor’s certification. However, Section 66 anticipates such issues by requiring auditor certification that capital reduction proposals comply with accounting standards. Courts typically give weight to the commercial judgement of stakeholders⁷, and rely on expert certifications unless there are valid reasons to

² (2009) 147 Comp Cas 712.

³ (2004) 122 Comp Cas 900.

⁴ (2005) 123 Comp Cas 458.

⁵ C.P. No.58/BB/2021 (order dated August 24, 2023).

⁶ CP/89(CHE)/2023 (order dated April 26, 2024).

⁷ *Miheer H. Mafatlal vs. Mafatlal Industries Ltd.*, (1997) 1 SCC 579; *In Re: Syngenta India Ltd.*, 2020 SCC OnLine NCLT 14783.

doubt their accuracy or validity.⁸

Alternative Redemption Pathways

The 2013 Act does not define “redemption”, which generally refers to repaying preference share capital. A capital reduction under Section 66 is a separate corporate action and may not fall within the “redemption” requirements of Section 55.

However, the Bombay High Court in *In Re: Birla Global Finance Ltd.*⁹ held that preference shares may be redeemed either under Section 80 of the 1956 Act (analogous to Section 55 of the 2013 Act) or via capital reduction under Section 100 of the 1956 Act (analogous to Section 66 of the 2013 Act). Even the securities premium account may be used for redemption in case of capital reduction. The NCLT, Mumbai endorsed this approach in the case of *In Re: Adonis Electronics Private Ltd.*¹⁰

Need for Commercial Flexibility with Procedural Safeguards

Indian case law, including *Reckitt Benckiser (India) Ltd.*¹¹ and *In Re: RS Livemedia (P) Ltd.*¹², confirms that share capital reduction is a corporate matter, subject only to protecting shareholders and creditors, and complying with procedural and accounting safeguards. Courts generally respect the commercial judgement of stakeholders and intervene only in cases of clear unreasonableness, improper valuation, or prejudice, acting mainly in a supervisory role.

Judicial authorities favour a broad reading of “in any manner” in Section 66, supporting commercial flexibility while ensuring procedural safeguards. The NCLT’s contrary stance in *Modern Hi-Rise* is therefore flawed and undermines Section 52(1). The correct interpretation is that, provided due process under Section 66 is followed—including shareholder approval and considering objections from creditors and regulators—companies may use the securities premium account for any legitimate purpose.

This publication is for educational and informational purposes only and is not intended and should not be construed as legal advice.

anagrampartners

Follow us for more
in/ anagrampartners.in

1101–2025

⁸ *Hero Motocorp Ltd. vs. Commissioner of Customs (Import & General)*, 2013 SCC OnLine Del 6506.

⁹ (2005) 126 Comp Cas 647.

¹⁰ C.P. 167/MB/2023 (order dated February 1, 2024).

¹¹ 2005 SCC OnLine Del 674.

¹² (2014) 187 Comp Case 243.