

September 24, 2020

To
BSE Limited
The National Stock Exchange of India Limited

Dear Sir/Madam,

Sub: Subex Limited “The Company” - Outcome of the Board Meeting

With reference to the captioned subject, please note that the National Company Law Tribunal, “NCLT”, Bengaluru Bench has passed the order dated September 23, 2020, approving the Scheme of Reduction of Equity Share Capital of the Company from Rs. 562 Crores to Rs. 281 Crores by reducing the face value of the equity shares from Rs. 10/- each to Rs. 5/- each. The Board at its meeting held today, took note of the Order and the Company will initiate further compliances in this regard. A copy of the NCLT Order is enclosed herewith.

For complete details on the Scheme of Capital Reduction, please refer the documents available on the website of the Company under <https://www.subex.com/investors/capital-reduction/>.

We request you to take the same on record.

Thanking you.

**Yours truly,
For Subex Limited**



**G V Krishnakanth
Company Secretary & Compliance Officer**

Encl: NCLT Order

Subex Limited

CIN - L85110KA1994PLC016663

Registered Address: RMZ Ecoworld, Outer Ring Road, Devarabisanahalli, Bangalore - 560103, India

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH, BENGALURU**

C.P.No.88/BB/2020
U/ss 66 & 52 of the Companies Act, 2013
R/w the NCLT (Procedure for Reduction of
Share Capital of Company) Rules, 2016
and the applicable provisions of the NCLT Rules, 2016

BETWEEN:

M/s. Subex Limited
RMZ Ecoworld Outer Ring Road,
Devarabisanahalli,
Bangalore- 560 103.

- Applicant / Petitioner

AND

The Registrar of Companies
E' Wing, 2nd Floor,
Kendriya Sadan, Koramangala,
Bangalore- 560 034.

- Respondent

Order Pronounced on: 23rd September, 2020

Coram:

1. Hon'ble Shri Rajeswara Rao Vittanala, Member (Judicial)
2. Hon'ble Shri Ashutosh Chandra, Member (Technical)

Parties/Counsels present (Through Video Conference):

For the Applicant/Petitioner : Mr. K. Dushyantha Kumar

ORDER

Per: Ashutosh Chandra, Member (Technical)

1. This Company Petition has been filed on behalf of the Applicant/Petitioner Company namely M/s. Subex Limited under Sections 66 and 52 of Companies Act, 2013, R/w NCLT (Procedure for Reduction of Share Capital of Company) Rules, 2016 and the applicable provisions of the NCLT Rules, 2016, by *inter alia* seeking that the reduction of paid up share capital (including securities premium account) resolved by the Special resolution as set out in paragraph No.8.5 of Petition be confirmed, etc.
2. The facts stated in the Company Petition are, briefly, as under:



- (1) **M/s. Subex Limited** (hereinafter referred to as 'Applicant / Petitioner'), was incorporated as a Private Limited Company under the name and style "Subex Systems Private Limited" on 06.12.1994 with the ROC, Karnataka under the Companies Act, 1956, as a company limited by shares with a share capital. Subsequently, it was converted into a Public Limited Company and its name was changed to 'Subex Systems Limited' and a fresh certificate of incorporation consequent upon change of name was issued by the ROC on 16.11.1995. Further, it was changed to 'Subex Azure Limited' and a fresh certificate of incorporation was issued by the RoC on 23.06.2006. Thereafter, it was changed to 'Subex Limited' and a fresh certificate of incorporation was issued by the RoC on 30.11.2007 with CIN: L85110KA1994PLC016663. The registered office of the Company is at RMZ Ecoworld Outer Ring Road, Devarabisanahalli, Bangalore-560103. The main objects of the Company *inter alia* are to carry on all kinds of businesses of designers, manufacturers, processors, assemblers, dealers, traders, distributors, importers, exporters, agents, consultants, system designers and contractors for erection and commission on turnkey basis, etc.
- (2) The Capital structure of the Company as on 31st March 2019 and 31st December 2019, are as under:

(Amounts in Rs.)

Particulars	31 st March 2019	31 st December 2019
Authorised Capital:		
5,88,040,000 equity shares of Rs.10 each	5,88,04,00,000	5,88,04,00,000
200,000 Preference Shares of Rs.98 each	1,96,00,000	1,96,00,000
Total	5,90,00,00,000	5,90,00,00,000
Issued, Subscribed and Fully paid up Share Capital:		
562,002,935 equity shares of Rs.10 each	5,62,00,29,350	5,62,00,29,350
Total	5,62,00,29,350	5,62,00,29,350



The Company has only one class of equity shares having par value of Rs.10 per share.

- (3) It is submitted that Article 3(2)(c) of the Articles of Association of the Company authorizes the Company to reduce its share capital by passing a special resolution, subject to the provisions of Companies Act, 2013.
- (4) The Company has its equity shares listed on both BSE Ltd. and National Stock Exchange of India Ltd. and the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 are applicable to the Company. The total Assets of the Company as per its audited balance sheet drawn on 31.03.2019 is Rs.744.79 lakh and the Equity and Liabilities is Rs.744.79 lakh.
- (5) The unaudited financial statements of the Company for the period ended 31.12.2019, as certified by the management and subjected to Limited Review by the auditors of the Company has been placed on record as Ann. D. The said financial statements of the Company have not been subject to any qualification, reservation or adverse remark or disclaimer by the auditors of the Company. Further, there is no pending inspection, inquiry or investigation against the Company under the Companies Act, 2013.
- (6) It is submitted that the Company's financial statements reflected accumulated losses (i.e., debit balance of profit and loss account) of Rs.3,84,01,09,702/- based on its unaudited financial statements as on 31.12.2019. Accumulated losses have substantially wiped off the value represented by the share capital. This has given rise to the need for re-adjustment of capital in its books of accounts. Accordingly, with the future prospect of growth and value addition to the Company and its shareholders, the Company now proposes to re-align the relationship between its capital and assets.
- (7) In this context, the Company, in accordance with Sec. 52 and 66 of the Companies Act, 2013 r/w NCLT (Procedure for reduction of share capital of Company) Rules, 2016 and other applicable provisions of the Companies Act, 2013 (to the extent applicable), and subject to the approval from Hon'ble NCLT, Bengaluru Bench and other statutory



authorities, as and where applicable, proposes to write-off the accumulated losses of Rs.3,84,01,09,702/- (Rupees Three Hundred and Eighty Four Crore One Lakh Nine Thousand and Seven Hundred and Two Only) reflecting in the unaudited financial statements of the Company as on 31.12.2019, against its paid-up share capital and securities premium account balance, to have a rational structure which is commensurate with its remaining business and assets.

- (8) The issued, subscribed and paid-up share capital of the Company is Rs.5,62,00,29,350/- (Rupees Five Hundred and Sixty Two Crore Twenty Nine Thousand Three Hundred and Fifty Only) comprising of 56,20,02,935 equity shares of Rs.10/- each as on 31.12.2019.
- (9) Sec. 52 of Companies Act, 2013 provides that balance in the securities premium account can only be utilized for purposes specified therein, and any utilization of securities premium account for other purposes would be construed as reduction in capital and the provisions of Sec. 66 of the Companies Act, 2013 would accordingly be applicable in respect of such reduction.
- (10) Hence, the Board of Directors believe that in order to present a fair position of the affairs of Company, the most practical and economically efficient option available to the Company at present would be to utilize the paid-up share capital and balance lying in the securities premium account to the extent of writing off the accumulated losses of the Company, subject to the confirmations/sanctions of the Hon'ble NCLT, Bengaluru Bench or such other appropriate authority, as applicable.
- (11) The benefits arising from the Scheme *inter alia* are stated as under:
 - a. *Under this Scheme, if approved, the books of the Company would better represent its financial position which would help the Company position itself better in the market, and undertake business activities efficiently. This would be value accretive to the shareholders as well, as their holdings would yield better results.*
 - b. *The proposed restructuring under the Scheme, if approved, would enable the Company to explore opportunities for the benefit of its*



shareholders, including in the form of dividend payments, in terms of the applicable law.

- c. The Scheme, if approved, may enable the Company to avail business opportunities that it was unable to take advantage of, because of it experiencing accumulated losses.*
- d. The reduction of capital in the manner proposed would enable the Company to have a rational structure which is commensurate with its remaining business and assets.*
- e. The proposed Scheme will enable the Company to use a part of the amount which is lying unutilized in the securities premium account of the Company in an effective manner for the benefit of the Company.*

- (12) It is stated that the Scheme is merely a reduction in the Share Capital of the Company prepared in terms of Sec. 52 and 66 of the Companies Act, 2013 r/w NCLT (Procedure for reduction of share capital of Company) Rules, 2016 and other applicable provisions of the Companies Act, 2013 (to the extent applicable) and does not envisage transfer, conveyance or vesting of any of the properties and/or liabilities of the Company to any person or entity. Consequently, the order of the NCLT, Bangalore Bench approving the Scheme will not attract any stamp duty in this regard under the applicable provisions of the Indian Stamp Act, 1899 or Karnataka Stamp Act, 1957.
- (13) The consent of the members of the Company to this Scheme of reduction of capital of the Company has been taken by way of a special resolution under the provisions of Section 52 and 66 of the Companies Act, 2013 r/w NCLT (Procedure for reduction of share capital of Company) Rules, 2016 and other applicable provisions of the Companies Act, 2013 (to the extent applicable) and any other applicable provisions.
- (14) It is further stated that all those shareholders of the Company who continue to hold their shares in physical form as on the date, to be fixed by the Board of Directors or a committee authorized by it for the purpose of giving effect to the orders of the NCLT sanctioning the Scheme ('Record date'), shall be issued and delivered fresh share certificates consequent upon the reorganization of capital irrespective of whether

such shareholders surrender their old share certificates or not. The old share certificates held by them in the Company shall be deemed to have been automatically cancelled and cease to be negotiable and be of no commercial or legal value and shall be non-usable and non-tradable on any stock exchanges or otherwise on and from the Record date. The stock exchanges shall also be intimated, on the Record date in this regard.

- (15) In the case of shares held in dematerialized and electronic form, the required procedure for reflecting the change in the holdings of the members of the Company, if and to the extent warranted, as a consequence of the sanctioning of this Scheme, shall be adopted for making the necessary alterations in the depository accounts of the shareholders.
- (16) Notwithstanding the reduction of capital of the Company in pursuance of the Scheme, the listing benefit of the Company on the stock exchanges where the existing equity shares of the Company are listed shall continue and the Company will comply with the applicable provisions of the listing agreement with the stock exchanges.
- (17) The Effect of the Scheme inter alia are as under:
- a. The proposed reduction of capital pursuant to the Scheme, by reducing the share capital and securities premium account of the Company against its accumulated losses, shall be reflected in the books of accounts of the Company, on the effective date, in following manner:
- Capital structure of the Company pre and post Scheme is reflected in the table below:

(Amounts in Rs.)

Pre-reduction		
Particulars	No of shares	Amount
Authorized Share Capital		
Equity shares of face value Rs.10 each	58,80,40,000	5,88,04,00,000
Preference shares of face value Rs.98 each	2,00,000	1,96,00,000



Issued, Subscribed and Paid up Share Capital		
Equity shares of face value Rs.10 each	56,20,02,935	5,62,00,29,350
Post-reduction		
Particulars	No of shares	Amount
Authorized Share Capital		
Equity shares of face value Rs.5 each	1,17,60,80,000	5,88,04,00,000
Preference shares of face value Rs.98 each	2,00,000	1,96,00,000
Issued, Subscribed and Paid up Share Capital		
Equity shares of face value Rs.5 each	56,20,02,935	2,81,00,14,675

The pre and post reduction position of the Securities Premium account and Accumulated Losses of the Company is presented below:

(Amounts in Rs.)

Particulars	Pre-reduction	Proposed Reduction	Post-reduction
Securities Premium Account	2,67,04,28,364	1,03,00,95,027	1,64,03,33,337
Profit and Loss (Dr) i.e. Accumulated Losses	3,84,01,09,702	3,84,01,09,702	NIL

- b. The aforesaid reduction is proposed to be effected by reducing the face value of each fully paid up equity share from Rs.10 to Rs.5.
- c. Upon Scheme being effective, the paid-up share capital of the Company shall get reduced from Rs.5,62,00,29,350/- (Rupees Five Hundred and Sixty Two Crore Twenty Nine Thousand Three Hundred and Fifty Only) divided into 56,20,02,935 equity shares of Rs.10 each to Rs.2,81,00,14,675/- (Rupees Two Hundred and Eighty One Crore Fourteen Thousand Six Hundred and Seventy Five Only) divided into 56,20,02,935 equity shares of Rs.5 each and the amount standing to the credit of the securities premium account shall get reduced from Rs.2,67,04,28,364/- (Rupees Two Hundred and Sixty Seven Crore Four Lakh Twenty Eight Thousand Three

Hundred and Sixty Four Only) to Rs.1,64,03,33,337/- (Rupees One Hundred and Sixty Four Crore Three Lakh Thirty Three Thousand Three Hundred and Thirty Seven Only). The Scheme for Reduction of capital is enclosed as Ann. E.

- d. The proposed reduction will be for the benefit of the Company and its shareholders, creditors and all concerned stakeholders. Such reduction will not cause any prejudice to the creditors of the Company. The reduction of capital does not involve either the diminution of any liability in respect of unpaid capital or the payment to any shareholder of any paid-up share capital. Further, the proposed adjustment would not in any way adversely affect the ordinary operations of the Company or the ability of the Company to honour its commitments or to pay its debts in the ordinary course of business.
- e. The Company shall not be required to use the words "AND REDUCED" as part of its corporate name and such use is dispensed with.

- (18) Upon this Scheme becoming effective, the authorized share capital of the Company shall be modified with regard to the face value of equity shares from Rs.10 to Rs.5 per share. Clause V of the Memorandum of Association and relevant article(s) of the Articles of Association of the Company, if any, shall stand modified/alterd to give effect to the reduction in face value of the equity shares of the Company from Rs.10 to Rs.5 per share, without any further approval. Accordingly, clause V of the Memorandum of Association of the Company shall, without any further act or deed, stand replaced with the following clause V:

The Authorized Share Capital of the Company is Rs. 5,90,00,00,000 (Rupees Five Hundred and Ninety Crores only) divided into 1,17,60,80,000 (One Hundred and Seventeen Crores Sixty lakhs and Eighty Thousand) equity shares of Rs.5 (rupees five only) each and 2,00,000 (Two lakhs only) preference shares of Rs. 98 (Rupees Ninety Eight only) each.



It is clarified that the approval of members of the Company to the proposed reduction of capital and this Scheme has been deemed to be their consent / approval also to the alteration of the Memorandum and Articles of Association of the Company as may be required under the Companies Act, 2013.

- (19) It is stated that the Board of Directors of the Company at its meeting held on 07.02.2020, resolved that pursuant to the provisions of Section 66 and other applicable provisions of the Companies Act, 2013, enabling provisions in the Articles of Association of the Company as per Article No. 3(2)(c) and subject to the required approval from shareholders and confirmation by the National Company Law Tribunal, Bengaluru Bench, the paid-up equity share capital of the Company be reduced from Rs.5,62,00,29,350/- (Rupees Five Hundred and Sixty Two Crores Twenty Nine Thousand Three Hundred and Fifty Only) comprising of 56,20,02,935 (Fifty Six Crores Twenty Lakhs Two Thousand Nine Hundred and Thirty Five) equity shares of Rs.10/- (Rupees Ten only) to Rs.2,81,00,14,675/- (Rupees Two Hundred and Eighty One Crores Fourteen Thousand Six Hundred and Seventy Five only) comprising of 56,20,02,935 (Fifty Six Crores Twenty Lakhs Two Thousand Nine Hundred and Thirty Five) equity shares of Rs.5/- (Rupees Five only). The certified true copy of the resolution passed by the Board of Directors at their meeting held on 07.02.2020 has been placed on record as Ann. F.
- (20) It is further stated that the Board of Directors also had informed the Stock Exchanges regarding the decision taken in the Board Meeting with respect to reduction of share capital as warranted in terms of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015. BSE Ltd. and National Stock Exchange of India had issued observation letter specifying 'no adverse observation' so as to enable the Company to file the scheme with the NCLT and the same has been placed on record as Ann. H.
- (21) By way of a Special Resolution of the Company, duly passed in accordance with Sec. 66 of Companies Act, 2013, at a General Meeting thereof, it was *inter alia* resolved as under:



“RESOLVED THAT pursuant to Sections 66, Section 52 and other applicable provisions of the Companies Act, 2013 (*“the Act”*) and the rules made thereunder (*“the Rules”*) (including any statutory modification(s) or re-enactment(s) thereof for the time being in force) and pursuant to Article 3(2)(c) of the Articles of Association of the Company and subject to confirmation by the Hon'ble National Company Law Tribunal, Bengaluru bench (*“NCLT”*), approvals as may be required from the appropriate authorities and the consent of the creditors as may be required, the approval of the members be and is hereby accorded to the Scheme of reduction of capital (*“the Scheme”*) of the Company by way of reduction of paid-up share capital of the Company from Rs.5,62,00,29,350 (divided into 56,20,02,935 equity shares of Rs.10 each) to Rs.2,81,00,14,675 (divided into 56,20,02,935 Equity shares of Rs.5 each) by reducing face value of each equity share from Rs.10 to Rs.5, along with a reduction to the Securities Premium Account of the Company from Rs.2,67,04,28,364 to Rs.1,64,03,33,337, and such cumulative reduction would be effected by writing off the Accumulated Losses of Rs.3,84,01,09,702 on the Effective Date of the draft Scheme of Reduction of capital (*“Scheme”*).”

“RESOLVED FURTHER THAT the Scheme providing reduction of share capital of the Company as submitted to the BSE Limited, designated stock exchange for observations and/or Securities and Exchange Board of India, be and is hereby approved.”

“RESOLVED FURTHER THAT effective from the date of the confirmation of the Scheme by NCLT, Bengaluru Bench and all other approvals from any other appropriate authorities as may be required, the consent and approval of the members be and is hereby accorded to the reduction of the paid-up share capital as it stands on the date of such confirmation by Rs.2,81,00,14,675 in aggregate and accordingly the paid-up capital of the Company after such reduction shall be Rs.2,81,00,14,675 divided into 56,20,02,935 equity shares of Rs.5 each fully paid-up.”

- (22) The e-voting (poll) with respect to the above resolution for reduction of share capital of the Company had been conducted through e-voting facility and the results were duly scrutinized by the Scrutinizer appointed thereto and the same has been placed on record as Ann. J. The result of the poll was submitted to both the stock exchanges on June 26, 2020,



along with the Scrutinizer's report and the same has been placed on record as Ann. K. The Petitioner Company has duly filed the copy of the special resolutions passed by way of e-voting/postal ballot, by the shareholders, with the RoC, in Form MGT-14 bearing SRN June 26th, 2020, as required under the Companies Act, 2013 and the same has been placed on record as Ann. L.

- (23) It is stated that the reduction of share capital (including securities premium account) does not entail diminution of any liabilities of the Company in respect of any unpaid capital nor entails payment to any shareholder of any paid-up capital. The scheme is merely intended to achieve a reduction in par value of the fully paid up equity shares of the Company, which is unrepresented by its available assets. Further, the said reduction would not in any way adversely affect the ordinary operations of the Company or the ability of the Company to honour its commitments or pay the debts in ordinary course of business, as there is no discharge of cash or distribution of any asset in kind. The above proposal, does not in any manner, alter, vary, or affect the rights of the creditors/ banks/ financial institutions. They would in fact be generally benefitted as the Scheme would help improving the financial position of the Company. The proposed capital reduction in any manner whatsoever does not, alter, vary, or affect the payment of any types of dues or outstanding amounts including all or any of the statutory dues payable or outstanding. The Company has 4 (four) unsecured creditors as on 22.06.2020. The list of Creditors along with Certificate of Auditor has been placed on record as Annexure M and the said creditors had given the NOC thereof as Annexure N.
- (24) A copy of the Certificate issued by the Statutory Auditors of the Petitioner Company to the effect that the accounting treatment specified in this application is in conformity with the accounting standards prescribed under Section 133 of the Companies Act, 2013 has been placed on record as Ann. O.
- (25) It is also stated that the Company has not raised any deposits from public as per the applicable provisions of Companies Act, 2013. A declaration



to this effect from Directors and a Certificate from Statutory Auditors certifying that the Company has not raised deposits and is not in arrears in the repayment of the deposits or the interest thereon has been placed on record as Ann.P1 and P2.

- (26) **Form of the Minute** proposed to be registered u/s 66(5) of the Companies Act, 2013 is as follows:

"The issued, subscribed and paid up capital of Subex Limited is henceforth Rs.2,81,00,14,675/- (Rupees Two Hundred and Eighty One Crores Fourteen Thousand Six Hundred and Seventy Five Only) divided into 56,20,02,935 (Fifty Six Crores Twenty Lakhs Two Thousand Nine Hundred and Thirty Five) Equity shares of Rs.5 each. At the date of registration of this minute, 56,20,02,935 (Fifty Six Crores Twenty Lakhs Two Thousand Nine Hundred and Thirty Five) Equity shares of Rs.5 each have been issued and are deemed to be fully paid up."

7. Pursuant to the notice issued, the Registrar of Companies, Karnataka and Regional Director vide Common Affidavit dated 07.09.2020 have *inter alia* submitted as under:

- (1) *The Petitioner Company was incorporated on 06.12.1994 and on verification it is noticed that the Petitioner Company has filed statutory returns up to the financial year ended 31.03.2019 with this office and all the said forms are taken on record. The Petitioner Company is a listed company and its shares are listed at both BSE Limited and NSE Limited. The Company has obtained NOC from both the stock exchange for trading of shares. The market value of the share is Rs. 10.40 and the 52 week high is Rs. 11 and low is Rs.2.80 only.*
- (2) *Article 3(2)(c) of the Article of Association of the Petitioner Company permits the reduction of share capital of the Company by passing a special resolution, subject to the provisions of the Companies Act, 2013.*
- (3) *The proposed petition is for reduction of paid up capital of the Petitioner Company from Rs.5,62,00,29,350/- comprising of 56,20,02,935 fully paid up equity shares of Rs.10/- each to Rs. 2,81,00,14,675/- comprising of 56,20,02,935 equity shares of Rs. 5/- each by way of reducing the face value of paid up equity shares to Rs.5/- per share from Rs.10/- per share.*

That the Petitioner Company also proposes u/s 66 of Companies Act, 2013 to write off Securities Premium to the tune of Rs. 1,03,00,95,027/- thereby the balance stand reduced to Rs. 1,64,03,33,337/-. As per the Scheme, reduction of share capital including Securities Premium account does not entail diminution of any liabilities of the Company in respect of any unpaid capital nor entail payment to any shareholder of paid up capital.

- (4) *The reason stated for reduction of capital as per the Scheme is that the Petitioner Company's unaudited financial statements for the nine month period ended 31.12.2019 reflected accumulated losses amounting to Rs.3,84,01,09,702/-, and the restructuring would enable the Petitioner Company to have a rational structure which is commensurate with its remaining business and assets, and the books of the Company would better represent its financial position which would help the Company position itself better in the market and undertake business activity efficiently, effective utilization of unutilized Securities Premium account raising funds from the capital market or from banks, etc. The Company has incurred a loss of Rs.227 Crores in the nine months from 01.04.2019.*
- (5) *Upon the scheme becoming effective all those shareholders of the Petitioner Company who continue to hold their shares in physical form shall be issued and delivered fresh share certificates consequent upon the reorganization of capital irrespective of whether such shareholders surrender their old share certificates or not. The old share certificates held by them in the Petitioner Company shall be deemed to have been automatically cancelled and cease to be negotiable and be of no commercial or legal value and shall be non-usable and non-tradable on any stock exchanges or otherwise on and from the record date. In the case of shares held in dematerialized and electronic form, the required procedure for reflecting the change in the holdings of the members of the company, if and to the extent warranted, as a consequence of the sanctioning of this Scheme, shall be adopted for making the necessary alterations in the depository accounts of the shareholders.*
- (6) *The Board of Directors at their meeting held on 07.02.2020 considered and approved the reduction of paid up share capital. The resolution passed for the capital reduction was filed by the Petitioner Company in Form No. MGT-14 vide SRN R34800185 dated 05.03.2020 and the said form was approved by this office.*



- (7) *The Equity Shareholders have approved the proposal of reduction vide resolution passed through postal ballot on 25.06.2020. The resolution passed for the capital reduction was filed by the Petitioner Company in Form No. MGT-14 vide SRN R43376078 dated 26.06.2020 and the said form was approved by this office.*
- (8) *As per the Scrutinizer's Report enclosed with the application, 394 members with 15,08,27,099 votes representing 27.05% of the total vote share of the Petitioner Company were polled, and out of these 15,01,63,793 votes i.e. 99.56% of the total votes polled, were in favour of the proposal of capital reduction and 6,63,306 votes, i.e. 0.44% of the total votes polled, were against the proposal of capital reduction. It is noted that as on 30.06.2020, the total 96.10% shares are held by the public including small shareholders and remaining 3.90% are held by others. The promoters or the Directors are not holding any shares in the Company. Hence, in this listed company, the reduction of capital would have a larger adverse impact on the general investors, though the company is expecting bulling in the secondary market upon the reduction and writing off loss to NIL.*
- (9) *It is noticed from the Petitioner Company's Audit Report for the year ended 31.03.2019 it is stated under a 'Key audit matters' that the carrying value of investment in wholly owned subsidiaries as at 31.03.2019 amounts to Rs. 64,369 lakhs which is assessed for impairment. It is noticed from the P&L A/c that there was a deficit balance of Rs.15,684 lakhs. It is noticed from the unaudited financial statements prepared as on 31.12.2019 that the deficit balance has fallen further to Rs. 38,407 lakhs, which is primarily on account of further losses due to exceptional items amounting to Rs.21,361 lakhs incurred during the nine months. Out of the losses, Rs.16,808 lakhs was shown as on account of impairment of intangible assets and investment in subsidiary, and Rs.3,599 lakh was on account of impairment of intangible assets. The Petitioner Company may be advised to place the full facts with regard to the exceptional items of Rs.21,361 lakhs on account of impairment of intangible assets and investment in subsidiary, before NCLT and a copy be served on the Directorate for giving a final report.*
- (10) *The 'Key audit matters' para in the Audit Report for the year ended 31.03.2019 also states that the Petitioner Company has received some*



demand orders and notices relating to Income Tax and Service Tax matters which are being contested by the Company. Hence the Petitioner Company may be advised to get NOC from the Regulatory Authorities for the present scheme.

- (11) *As per the Scheme, the Company will be utilizing Securities Premium Account of Rs. 103,00,95,027/- amount of the total outstanding premium of Rs. 267,04,28,364/-. Upon the Scheme is approved, balance would be Rs.164,03,33,337/- only. The Hon'ble Tribunal's attention is invited to the provisions of Section 52 of the Companies Act, 2013 where by the Securities Premium can be utilized only for specific purpose as stated and Sub Section (2) and (3) of the said Act.*
- (12) *The Petitioner Company has submitted an application for adjudication u/s 454 of the Companies Act, 2013 to this office on 06.09.2019 for non-compliance of the provisions of Section 203(4) of the Act since the Petitioner Company had delayed in filling up the position of Company Secretary which had fallen vacant on 15.06.2017 but was filled only on 10.07.2018. The adjudication has been done and order was issued on 10.08.2020 for paying penalty.*
- (13) *The Petitioner Company has submitted a certificate as required under first proviso to Sec. 66(3) of the Companies Act, 2013 from their auditors S.R. Batliboi & Associates LLP dated 07.02.2020 for certifying that the accounting treatment proposed by the Petitioner Company is in accordance with the Accounting Standards specified in Section 133 of the Act. However, the Auditor's Certificate fails to conclude that the proposed accounting treatment for the scheme is in accordance with the Accounting Standards.*
- (14) *The Petitioner Company has submitted a certificate from their auditors S.R. Batliboi & Associates LLP dated 26.06.2020 stating that auditors have no reason to believe that the Petitioner Company has accepted deposits which falls under the purview of provisions of Secs. 73 to 76 of Companies Act, 2013 as at 26.06.2020 and that there are arrears in the repayment of deposits or interest thereon (if any), by the Petitioner Company. Further, a declaration by the Managing Director of the Petitioner Company has been furnished stating that the Company has not accepted any deposits u/s 73 to 76 of the Act and the Company is not in arrears of repayment of deposits or the interest thereon as at 26.06.2020. The auditor's certificate and the*



Managing Director's declaration have been furnished in compliance of the provisions of Sec. 66 of the Act r/w Rule 2(2) (c) of the NCLT (Procedure for reduction of share capital of company) Rules, 2016.

- (15) *The Petitioner Company has furnished a statement of outstanding creditors as on 22.06.2020, i.e. as on a date not earlier than fifteen days prior to the date of filing of the application, along with the details of the creditors' outstanding amounts due and their address, and which is duly certified by its MD. It is noticed that all the creditors are group entities of the Petitioner Company. Respective NOCs from authorised representative of the group entities have been furnished as well. A certificate from the Petitioner Company's Auditors S.R Batliboi & Associates LLP stating that auditors have no reason to believe that the statement of outstanding creditors submitted by the Petitioner Company is not in agreement with the unaudited books of account and other relevant records of the Company as on 22.06.2020 has been furnished as well. The statement of outstanding creditors duly certified by the Petitioner Company's MD and a certificate from the Petitioner Company's Auditor certifying the same have been furnished in compliance of the provisions of Sec. 66(1) of the Companies Act, 2013 r/w Rule 2(2)(a) and (b) of the NCLT (Procedure for reduction of share capital of company) Rules, 2016. Provisions of Sub-section 10 of Section 66 of the Companies Act, 2013 is invited as far as creditors list is concerned.*
- (16) *A disclaimer has been noticed in the statement of outstanding creditors furnished by the Petitioner Company that the statement does not include any provisions or accruals for expenses where the invoices from vendors have not been received.*
- (17) *Being a listed company, the company has to ensure the SEBI, LODR and circulars from time to time is complied by the Petitioner Company before and after the Scheme is approved. Since the NOCs given by BSE and NSE are valid for 6 months, the petitioner company may obtain extension of time in case the time lapses before the approval of the present scheme.*
- (18) *As seen from the reply dated 27.07.2020 at point no.2 of the Petitioner Company, it was stated that the Company is yet to transfer the underlying shares on which the dividends declared have been unpaid/unclaimed for a period of seven years or more. In this regard, the company may be*



advised to take necessary action and furnish an undertaking to the NCLT with regard to the compliance.

- (19) *As the petitioner company is reducing its authorized/paid up capital, necessary compliance/alteration of MOA shall be filed with ROC for recording such reduction upon the scheme is approved by this Tribunal.*
- (20) *No prosecution, complaints, technical scrutiny and inspection are pending with this office.*

8. In response to afore said ROC & RD observations, *Ld. PCS* for the Petitioner vide Compliance Memo dated 14.09.2020 has *inter alia* submitted as under:

- (1) *As regards the observation made in paragraph 3(i) of the ROC & RD report, the Petitioner submitted that the Scheme is proposed to be effected by reducing the face value of the shares from Rs.10 to Rs.5. The proposed Scheme of Reduction of Capital (including securities premium account) would not impact the economic value/worth of shares, held by the investors of the Company. Further, under this Scheme, if approved, the books of the Company would better represent its financial position which would held the Company position itself better in the market and undertake business activities efficiently and this would be value accretive to the shareholders as well, as their holding would yield better results. The scheme is in any way not prejudicial to the interests of the Shareholders of the Company.*
- (2) *In so far as the observation made in paragraph 3(j) of the ROC & RD report, the Petitioner submitted that considering the growth challenges and significant investment requirements of telecom operations which has resulted in longer opportunity conversion cycles and lower spends towards IT solutions and the overall Indian macro-economic slowdown, the management of Subex Group had advanced the annual impairment exercise and had performed detailed impairment analysis, during the quarter ended 31.12.2019. Further, the valuation was conducted by an external valuation expert, basis which management made an impairment provision of Rs.3,599 Lakhs in respect of intangible assets owned by Subex Limited and an impairment provision of Rs.16,808 lakhs in respect of assets owned by Company's subsidiary (which was passed onto the Company as share of loss from its subsidiary LLP for the relevant period). The remaining amount of the exceptional items (Rs. 954 lacs) does not*



pertain to the above impairment exercise, details of which have not been appropriately indicated in the financial statements of the Company for the relevant period.

- (3) *In so far as the observation made in paragraph 3(k) of the ROC & RD report, the Petitioner submitted that the Scheme of Reduction of Capital of the Company will not entail any payout to the shareholders or any transfer of assets / liquidation of the Company and accordingly, there shall not be any adverse effect on the ability of the Company to repay its tax dues, as and when required. Further, serving of the notice of application/petition by the Company in the matter of Scheme of Reduction of Capital on the Income Tax/Service Tax authorities, for representation/NOC, is not specified in the Rule 3(1) of NCLT (Procedure for reduction of share capital of Company) Rules, 2016.*
- (4) *In so far as the observation made in paragraph 3(l) of the ROC & RD report, the Petitioner submitted that Section 52(1) of Companies Act, 2013 ('Act') permits reduction of securities premium account of companies in the same manner as provided u/s 66 of the Act for the purposes of reduction of paid-up share capital. As such Petitioner Company had contemplated to utilise the securities premium account for the purpose of this Scheme of Reduction of Capital. A reference is drawn to the matter of Vaibhav Global Limited (136 CLA 208) (Raj.) (2017), wherein the Hon'ble High Court has held that the share premium account of a company can be reduced or utilized for adjustment of the company's consolidated losses, by way of Scheme of Reduction of Capital. Further, the balance amount of Rs.164,03,33,337 will be retained in the securities premium account by the Company and the Company undertakes to utilize it in accordance with Section 52 of the Act.*
- (5) *In so far as the observation made in paragraph 3(m) of the ROC & RD report, the Petitioner submitted that the order for Adjudication was communicated to the Petitioner Company on 10.08.2020 through email and the Petitioner Company is in the process of making arrangement for payment of penalty. Further, the Petitioner Company undertakes that Form INC-28 will be filed within the prescribed due date enclosing the proof of payment and the copy of the order.*
- (6) *In so far as the observation made in paragraph 3(n) of the ROC & RD report, the Petitioner submitted that the Certificate from the auditors of the*

Company, M/s. S.R. Batliboi & Associates LLP, dated 07.02.2020 states that the accounting treatment proposed by the Company is in conformity with the Accounting Standards specified in Sec. 133 of the Act. Attention has been drawn to the 'Conclusion' paragraph in the certificate which reads that "Based on the procedures performed specified in paragraph 8 above and according to information and explanations received by us, nothing has come to our attention that causes us to believe that the Proposed Accounting Treatment prescribed in the Scheme is not in conformity with Section 133 of the Act r/w the Rules."

(7) In so far as the observation made in paragraph 3(s) of the ROC & RD report, the Petitioner submitted that all unpaid and unclaimed dividends which remained unpaid and unclaimed for a period of seven years from the date of declaration of the dividend was duly transferred by the end of financial year 2014-15 and thereafter, no amounts need to be transferred to the Investor Education Protection Fund. Pursuant to Sec. 124(6) of the Companies Act, 2013 r/w Rule 6 of Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund) Rules, 2016 the Company is yet to transfer the underlying shares on which the dividend declared is unpaid or unclaimed for a period of seven years or more. The Petitioner Company hereby undertakes to transfer the underlying shares in respect of which dividend declared is unpaid or unclaimed for a period of seven years or more.

9. Heard Shri K. Dushyantha Kumar, learned PCS for the Applicant/Petitioner through video conference. We have carefully perused the pleadings of both the parties and extant provisions of the Companies Act, 2013, and the Rules made thereunder, as also the reply furnished by the Applicant/Petitioner to the observations of the ROC & RD.
10. Section 66 of the Companies Act, 2013, deals with reduction of share capital of a Company limited by shares or guarantee, after applying to the Tribunal, and based on a Special resolution passed by the Board of Directors in this regard. This section provides for reduction of share capital either through extinguishment or reduction of the liability on any of the shares of a Company in respect of the share capital which is not paid-up, or on cancellation of any paid-up share capital which is lost or is unrepresented by available assets, or



on payment of any paid-up share capital which is in excess of the wants of the Company, subject to the conditions enumerated therein.

11. Article 3(2)(c) of the Articles of Association of Petitioner Company permits reduction of Share Capital of the Company, any Capital Redemption Reserve Fund or any Share Premium account. The Reduction of Share Capital has been done pursuant to the approval of Board of Directors vide Resolution passed at their meeting held on 07.02.2020 and Resolution passed through postal ballot on 25.06.2020 by the Members at the General Meeting.
12. We have perused the report of the ROC, Karnataka & Regional Director, who have examined the Application and made certain observations, which have been answered by the Applicant through its Reply dated 14.09.2020. The same has been examined along with Financial Statements for the FY ending 31.03.2019 and 30.09.2019, which appear to reflect the position stated in the replies furnished by the Applicant. It appears that the Reduction of Capital has been contemplated for readjustment of excess capital which is not required for carrying on the business of the Applicant Company, as it is proposed to scale down the business by utilizing the paid-up share capital and balance lying in the securities premium account to the extent of writing off the accumulated losses of the Company. Such reduction of paid up share capital does not involve the diminution of any liability in respect of unpaid share capital. No prejudice is caused to any of the creditors or other stakeholders with the proposed reduction as there is no reduction in the amounts payable to them, no compromise or arrangement is contemplated with the creditors and there is no reduction in the security, if any. The Company also has sufficient funds even after the reduction, and hence neither its business operations would be adversely affected, nor its ability to honour its commitments or to pay its debts in the ordinary course of its business. Hence it appears that the impugned action will not cause prejudice to any of the stakeholders, if the Reduction of Capital is approved. It appears that the Scheme if contemplated so that the books of the Company would better represent its financial position; enable the Company to explore opportunities for the benefit of its shareholders and business opportunities; to have a rational structure which is commensurate



with its remaining business and assets and to use unutilized amounts in the securities premium account of the Company in an effective manner for the benefit of the Company.

13. On a perusal of the material brought on record, it appears that the Applicant fulfils the conditions laid down in Section 66 of the Companies Act, 2013 and the proposed reduction is conformity with the Accounting Standards specified in section 133 of the Companies Act, 2013.
14. In view of the foregoing we are inclined to dispose of the Company Petition by according approval to the proposed Reduction of Capital. It is made clear that this order shall not preclude the RBI/FEMA authorities or any other statutory authority to take any appropriate action in the event of any violation under their respective regulations.
15. In the result, C.P. No.88/BB/2020 is disposed of with the following orders:
 - (1) The Reduction of Share Capital as approved by Board of Directors of the Company by a Resolution passed at their meeting held on 07th February, 2020 and also Resolution passed through postal ballot on 25th June, 2020 by the Members of the Petitioner Company in General Meeting, is hereby approved and confirmed;
 - (2) The Company is permitted to register the following *Form of the Minute* under Section 66(5) of the Act:

"The issued, subscribed and paid up capital of Subex Limited is henceforth Rs.2,81,00,14,675/- (Rupees Two Hundred and Eighty One Crores Fourteen Thousand Six Hundred and Seventy Five Only) divided into 56,20,02,935 (Fifty Six Crores Twenty Lakhs Two Thousand Nine Hundred and Thirty Five) Equity shares of Rs.5 each. At the date of registration of this minute, 56,20,02,935 (Fifty Six Crores Twenty Lakhs Two Thousand Nine Hundred and Thirty Five) Equity shares of Rs.5 each have been issued and are deemed to be fully paid up."



- (3) The Company shall publish the reduction of Share Capital in an English daily "The Hindu" and a Kannada daily "Udayavani" newspapers, Bengaluru Edition within a period of 2 weeks from the date of the receipt of the Order;
- (4) The Company is directed to deliver a certified copy of this Order along with the above Form of the Minute to the Registrar of Companies and all the Statutory Authorities concerned with the Company, within 30 days of the receipt of the Order;
- (5) The Applicant Company shall comply with the provisions of the Income Tax Act, 1961, consequent to its reduction of capital, as may be applicable;
- (6) The Petitioner Company shall ensure compliance of all the undertakings as submitted in its letter dated 14.09.2020 and as observed by the ROC & RD in its report;
- (7) If at any point of time, any Creditors oppose the Scheme, they are free to approach the Tribunal for settling their dues, if the Company fails to settle their dues as per terms and conditions of the contract/agreement with the Company;
- (8) This Order is limited to the reduction of share capital alone, and it will not come in the way of Registrar of Companies or any other authority to take appropriate action(s) in accordance with law, for any other violations / offences or omissions, if any, committed by the Company or any of its personnel prior or during the reduction of share capital;
- (9) Any person shall be at liberty to apply to the Tribunal in the above matter for any directions that may be necessary.



ASHUTOSH CHANDRA
MEMBER, TECHNICAL



RAJESWARA RAO VITTANALA
MEMBER, JUDICIAL

Krishna