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Accumulated losses against Securities Premium Reserve - Permitted or not?

Section 66 read with Section 52 of Companies Act, 2013

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The Sanctity of the Reserve

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When a company issues shares above face value, the premium is parked in the Securities Premium Reserve — a protected capital account, not free reserves.

Protected like capital

Any reduction of the SPR is treated 'as if it were paid-up share capital' (section 52(1) - same protections, same NCLT route.

Builds up over time

Every IPO, rights issue or preferential allotment at a premium adds to this reserve - it can run into hundreds of crores.

Why it matters now

Companies with accumulated losses look to SPR as a way to clean the balance sheet. That is where the legal question arises.

The Statutory Clash

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The Companies Act, 2013 creates a legal puzzle — three provisions pull in different directions.

Section 52(1)

The Bridge
SPR is treated exactly like paid-up share capital for purposes of reduction. Section 66's route applies.

Section 52(2)

The Barrier?
Lists five specific permitted uses of SPR. Adjustment of accumulated losses does not appear in this list.

Section 66

The Gateway
Allows reduction of capital that is no longer represented by real assets - with NCLT approval and a special resolution.

The question: Does Section 52(1) open the door fully or does Section 52(2) close it?

NCLT Orders — Where the Bench Said Yes

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Multiple benches across the country have approved the use of SPR for adjustment of accumulated losses.

- **Subex Limited · Bengaluru Bench · 2020**
  SPR + Face Value Reduction
  Listed company. Losses adjusted via SPR and reduction in face value per share. BSE & NSE gave no-adverse-observation.

- **Piramal Fund Management Pvt. Ltd. · Mumbai Bench · 2025**
  SPR
  Utilization and reduction of SPR to clear accumulated losses.

- **Candor Kolkata One Hi Tech Structures Pvt. Ltd.**
  Kolkata Bench · 2024
  SPR
  Large-scale restructuring. SPR utilized by treating as share capital reduction to set off accumulated losses.

NCLT Orders — Where the Bench Said Yes

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Multiple benches across the country have approved the use of SPR for adjustment of accumulated losses.

- **Black Box Limited · Mumbai Bench · 2024**
  SPR + Capital Reserve
  Multiple reserves including SPR used for adjustment. No creditor prejudice found.

- **Nexus Udaipur Retail Pvt. Ltd. · Bengaluru Bench · 2024**
  SPR
  SPR utilization approved for total loss write-off, affirming the permissive "Gateway" interpretation of Section 52(1).

- **Sodecia India Pvt. Ltd. · Chennai Bench · 2025**
  SPR + selective paid-up capital reduction
  Bench confirmed SPR is governed by the same reduction regime as paid-up capital.

The Dissent — Where the Bench Said No

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A minority of benches have taken a stricter view of what Section 52(2) permits.

- **Firepro Systems Pvt. Ltd. · Bengaluru Bench · 2025**
  Ground: Section 52(2) is exhaustive
  The Tribunal held that the five uses listed in Section 52(2) are the only permitted uses of SPR. Adjustment of losses is not in that list. Paid-up share capital reduction was approved; SPR reduction was not.

- **Modern Hi-Rise Pvt. Ltd. · Kolkata Bench · 2025**
  Ground: Misclassification / improper use of SPR
  The bench rejected the scheme on the ground that the proposed classification and utilisation of the securities premium did not meet the required statutory standard for capital reduction.

- **Due North Yoga Pvt. Ltd. · Bengaluru Bench · 2023**
  Ground: Non-conformity with Accounting Standards
  Petition rejected on the ground that the proposed accounting treatment did not comply with AS 1 and AS 38 relating to intangible asset treatment. The bench did not proceed to examine the Section 52 question.

The Two Judicial Schools of Thought

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The divergence across NCLT benches comes down to one question — how do you read Section 52?

The Gateway School

- Section 52(1) equates SPR with paid-up capital and brings it fully into the capital reduction regime under Section 66.
- The procedure for reduction is the same - special resolution, NCLT approval, creditor protection.
- If there is no harm to creditors, accounting standards are followed, and the shareholders approve - the reduction should be sanctioned.
- Writing off losses that are already real and already reflected in the books is simply an honest accounting correction.
- This view has been adopted by multiple NCLT benches and is supported by the Rajasthan High Court in Vaibhav Global Ltd. (2017).

The Two Judicial Schools of Thought

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The divergence across NCLT benches comes down to one question — how do you read Section 52?

The Exhaustive List School

- Section 52(2) lists exactly five uses for which SPR can be applied and that this list is exhaustive, not illustrative.
- Adjustment of losses is not one of the five listed uses
- Section 52(1) governs only the procedure for any SPR reduction - it does not expand the permitted purposes beyond what Section 52(2) allows.
- Any enabling clause in the Articles of Association cannot override what the statute expressly restricts - Section 6 of the Act makes this clear.
- The strict interpretation rule applies when statutory language is clear.

Conclusion

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1. Numerous NCLT benches permit using Securities Premium to adjust losses by treating it as paid-up capital under Section 52(1) via Section 66, referring to stakeholders' commercial wisdom and noting that such internal domestic affairs do not prejudice the rights of creditors or employees.

2. Section 52(1) of the Companies Act, 2013, expressly mandates that the provisions for the reduction of share capital apply to the SPR as if it were paid-up share capital, thereby providing a procedural gateway to Section 66 for any valid business purpose, including the adjustment of losses