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Section 66 vs. 230: Stand-Alone Capital Reduction, Appointed Date Advantage & the Income-Tax Impact

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Binoy Parikh

Partner, Katalyst Advisors

Anuj Dashora

Senior Consultant

I. Introduction

The Companies Act, 2013 contains two distinct statutory routes for effecting a reduction of share capital. Section 66 is the dedicated capital reduction provision, requiring a special resolution of the members and confirmation by the National Company Law Tribunal after notice to the Central Government, the Registrar of Companies, the creditors and, in the case of a listed company, the Securities and Exchange Board of India. Section 230 is the omnibus compromise and arrangement provision, under which amalgamations, demergers, cancellations of classes of share capital, write-offs of accumulated losses, and reorganisations of reserves are routinely sanctioned.

Where the capital reduction is one limb of a composite scheme that also carries an amalgamation, a demerger, or a reorganisation of reserves, the company must necessarily go through Section 230, since the composite transaction itself can be effected only through a scheme of arrangement. The harder question, and the one that this article addresses, is the position of a stand-alone capital reduction. Where the only commercial step is a reduction of share capital, with no amalgamation, no demerger, and no other restructuring limb, must the company necessarily go through Section 66, or can it elect to undertake the same transaction as a scheme of arrangement under Section 230?

The two routes are mutually exclusive in any given case. The question is therefore one of

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structural choice rather than of parallel compliance. The position, as it stands following the NCLAT's decision in *R. Systems International Limited* and the line of NCLT orders that have followed, is that the choice is open to the company. A stand-alone capital reduction may be effected either under Section 66 as a stand-alone petition, or under Section 230 as a scheme of arrangement that contains the reduction as its operative limb. The choice is not academic. Each route carries different procedural mechanics, different timelines, and different structuring possibilities. Of these, the most important is the **appointed date mechanism**, which is available under the Section 230 route and not under Section 66.

II. The Two Routes

A. Section 66 as the Dedicated Route

Section 66 is a stand-alone provision dealing specifically with reduction of share capital. It contemplates a special resolution under Section 66(1), confirmation by the Tribunal under Section 66(3), and notices to the Central Government through the Regional Director, to the Registrar of Companies, to the creditors entitled to object, and to SEBI in the case of a listed company. The Tribunal's sanction is premised on satisfaction that creditor protection has been addressed and that the reduction does not involve any fraud or avoidance of statutory dues. Critically, the reduction takes effect from the date of the Tribunal's order. There is no concept of a deemed appointed date. The company has no ability to fix the moment in time from which the reduction is to operate.

B. Section 230 as the Omnibus Route

Section 230 empowers the Tribunal to sanction any compromise or arrangement between a company and its members or creditors, or any class of them. The Explanation appended to Section 230(1) is decisive in establishing that a stand-alone reduction of share capital falls within the scope of the provision:

"For the purposes of this sub-section, arrangement includes a reorganisation of the company's share capital by the consolidation of shares of different classes or by the division of shares into shares of different classes, or by both of those methods."

On its plain language, the Explanation brings any reorganisation of share capital within the definition of arrangement under Section 230. The textual consequence is that a capital reduction, whether stand-alone or part of a composite transaction, may properly be presented to the Tribunal as a Section 230 scheme. The procedural apparatus of Section

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230 then governs the exercise.

C. Mutually Exclusive, Not Cumulative

It is necessary to be clear at the outset that the two routes are mutually exclusive in any given case. A company effecting a capital reduction does not file a Section 66 petition and a Section 230 scheme simultaneously. The choice is binary. Either the reduction is taken through as a stand-alone Section 66 petition, or it is taken through as a Section 230 scheme. Where the company elects the Section 230 route, the application is customarily titled under “Section 230 read with Section 66 and other applicable provisions of the Companies Act, 2013”, but this is a drafting convention designed to put the Tribunal and the regulators on express notice of the capital reduction component, not an indication that the two routes are running in parallel. The Tribunal sanctions a single composite order under Section 230, and Section 66 is statutorily disapplied to the reduction effected under that order.

III. The Leading Authority: R. Systems International Limited

The authoritative confirmation that a stand-alone capital reduction may be effected under Section 230 is the NCLAT’s decision in *R. Systems International Limited* [Company Appeal (AT) No. 416 of 2017]. The NCLT in that matter had rejected a Section 230 application precisely on the ground that a reduction of share capital could only be undertaken under Section 66, and that the company could not elect the scheme route for what was, in substance, a capital reduction. In appeal, the NCLAT reversed the order. The relevant passage from the NCLAT’s decision is as follows:

“From Explanation below Section 230, it will be evident that for passing an order under Section 230 to compromise or make arrangements with the Creditors and the members, the provision of Section 66 shall not apply for reduction of share capital. Such order can be passed by the Tribunal under Section 230 of the Act. The Tribunal failed to notice the ‘Explanation’ below Section 230, which makes it clear that even for reduction of share capital effected in pursuance of the order of the Tribunal under Section 230, the provision of Section 66 shall not apply.”

Two propositions follow from *R. Systems International*. First, a reduction of share capital may be effected under Section 230, including where it is the only commercial step in the scheme. The Explanation to Section 230(1) provides the textual basis for this proposition, and the NCLAT’s reading of that Explanation is now the settled position. Second, where the company elects the Section 230 route, Section 66 is statutorily disapplied. The two routes

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do not run in parallel and they are not cumulative. The election of the scheme route forecloses the stand-alone Section 66 petition, and vice versa.

R. Systems International therefore answers the threshold question of whether the choice is open to the company. The next question, which is where most of the practitioner's thinking should be focused, is why a company would elect the Section 230 route in preference to a Section 66 petition where the only commercial step is a capital reduction. The principal answer lies in the appointed date mechanism.

IV. The Appointed Date Advantage

A. The Section 66 Position

Section 66 contains no concept of an appointed date. The reduction takes effect from the date on which the Tribunal's order is passed and registered with the Registrar of Companies. The company cannot specify, in its Section 66 petition, that the reduction is to be deemed effective from an earlier date. This has real consequences. The petition timeline, from the special resolution to the Tribunal's order, can run anywhere from 4 to 6 months depending on the bench, the complexity of the creditor representations, and the time taken by the Regional Director to file his report. The company therefore has limited control over the date on which the reduction takes effect, which is to say limited control over the cap table cut-off, the accounting period in which the reduction is to be reflected, the dividend entitlement of the cancelled or reduced shares, and the tax year in which the resulting capital gains or losses are to be recognised by the shareholder.

B. The Section 230 Position

Section 232(6) of the Companies Act, 2013, read with the principles laid down by the Supreme Court in Marshall Sons & Co. India Ltd. v. ITO [TS-5102-SC-1996-O] and the Ministry of Corporate Affairs General Circular No. 09/2019 dated 21 August 2019, provides for a fundamentally different mechanism. The scheme is required to indicate an appointed date from which it is to be effective, and the scheme is then deemed to be effective from that appointed date even though the Tribunal's sanction order may come several months later.

The MCA Circular, in clarifying Section 232(6), provides that the appointed date may be a specific calendar date or may be tied to the occurrence of an event such as the grant of a regulatory approval or the satisfaction of a pre-condition. Where the appointed date is a

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specific calendar date, it may precede the date of filing of the scheme application with the Tribunal. The Circular further provides that if the appointed date is significantly ante-dated beyond a year from the date of filing, the justification must be specifically brought out in the scheme and must not be against public interest. Read together, the Supreme Court's decision in Marshall Sons and the MCA Circular establish that a scheme of arrangement may fix a retrospective appointed date going back up to one year prior to the filing date as a matter of routine practice, and further back where a public-interest-consistent justification is articulated in the scheme.

The position of the appointed date concept where the Section 230 scheme is a pure capital reduction (and therefore does not engage Section 232 directly) deserves a brief observation. Section 232(6) is in terms applicable to schemes that involve a transfer of undertaking under Section 232. However, the appointed date concept is not a creature of Section 232 alone. It is rooted in the Supreme Court's reasoning in Marshall Sons, which is grounded in the inherent nature of a scheme of arrangement as a commercial contract that takes effect from a date the parties to the scheme determine. Tribunals have, in practice, accepted appointed dates in stand-alone Section 230 schemes that do not engage Section 232, and the MCA Circular itself contemplates the appointed date as a feature of schemes of arrangement generally. The conservative drafting position is to fix the appointed date in the scheme document itself, articulate the commercial rationale for the chosen date, and rely on the Marshall Sons principle as the doctrinal basis, even though the decision was in the context of income-tax provisions.

C. Why the Difference Matters

The practical consequences of the appointed date difference are significant. For a company effecting a capital reduction towards the close of a financial year, the Section 230 route allows the reduction to be reflected in the financial statements of the year just concluded by fixing the appointed date as the closing day of that year, even if the Tribunal's order does not come until well into the following year. For a shareholder whose tax position turns on the year of cancellation of the shares (because of carry-forward considerations under Sections 70, 71, and 74 of the Income-tax Act, 1961, or because of the holding period analysis for long-term versus short-term capital loss), the appointed date allows the tax event to be located in the chosen tax year. For a private equity or joint venture exit effected through a selective capital reduction, the appointed date allows the exit to be tied to a specified commercial milestone such as completion of an asset transfer or grant of a regulatory approval. None of these structuring possibilities is available under Section 66.

The appointed date is, accordingly, the principal structural reason a company would prefer the Section 230 route for a stand-alone capital reduction. There are secondary advantages, including the broader regulatory notice base under Section 230(5) which can pre-empt subsequent objections, and the Tribunal's familiarity with the scheme architecture from

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sanctioning composite transactions. However, the appointed date advantage stands on its own as a sufficient justification for the choice in most fact patterns where the timing of the reduction has commercial or tax consequences.

V. Procedural Equivalence: Why the Choice of Section 230 is Substantively more Robust

The election of the Section 230 route does not dilute stakeholder protection. A comparative reading of the two procedural frameworks confirms that the protections under Section 230 are at least as comprehensive as those under Section 66, and in several respects more comprehensive.

Section 230(5) requires notice of the scheme to be served on the Central Government, the Income Tax Authorities, SEBI, the Registrar of Companies, the stock exchanges on which the shares are listed, the Reserve Bank of India, the Official Liquidator, the Competition Commission of India, and every sectoral regulator concerned with the business of the company. Each of these stakeholders has a statutory right to make a representation to the Tribunal. Section 230(1) mandates class meetings of creditors and members and approval by the requisite majority in value. Sections 230(2) and 230(9) build in creditor protection that the Tribunal enforces at the sanction stage.

By contrast, Section 66 contemplates notices to a narrower set of stakeholders, namely the Central Government, the Registrar of Companies, the creditors, and (for listed companies) SEBI. The additional regulatory touchpoints under Section 230(5), namely notices to the Income Tax Authorities, the Competition Commission of India, the Reserve Bank of India, and sectoral regulators, are features that Section 66 does not require. Further, express written consents from creditors are also not required, although the NCLT would look into the capital reduction from a fairness perspective. The protections that Section 66 is designed to deliver creditor protection, regulatory scrutiny, and transparency to the members, are therefore not thinned out in the Section 230 process. They are, if anything, more comprehensive. The election of the Section 230 route is consequently substantively more robust from a stakeholder protection standpoint, which leaves the appointed date advantage as the primary commercial driver of the choice.

VI. The Supporting Precedential Line

The position established by *R. Systems International* has been applied and confirmed by NCLT benches across jurisdictions. The relevant orders are briefly noted below.

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A. Sterling and Wilson Private Limited (NCLT Mumbai, 19 August 2025)

In *Sterling and Wilson Private Limited* [C.A.(CAA)/47(MB)/2025], the NCLT Mumbai Bench sanctioned a Section 230 scheme that provided for the reduction of zero-coupon compulsorily convertible preference share capital and a reorganisation of reserves culminating in the creation of a Business Reconstruction Reserve Account against which accumulated losses were written off. Counsel for the applicant relied on *R. Systems International* and *Miheer H. Mafatlal v. Mafatlal Industries Ltd.* to press the proposition that the provisions of Section 66 were not separately attracted. The Tribunal recorded and accepted the submission. The order is a useful contemporary illustration of a stand-alone capital reduction (with associated reserve reorganisation) being effected through the Section 230 route, with the appointed date and the deeming machinery operating in the manner contemplated by the scheme.

B. Hindustan Zinc Limited (NCLT Jaipur, 6 February 2023)

In *Hindustan Zinc Limited* [CP(CAA) No. 3/230-232/JPR/2023 in CA(CAA) No. 10/230-232/JPR/2022], the NCLT Jaipur Bench sanctioned a scheme that involved, among other steps, the transfer of amounts from the General Reserve to Retained Earnings. The Tribunal held that the word “arrangement” in Sections 230 to 232 must be given the widest possible amplitude and that it covers all arrangements and not merely reorganisations or reclassifications of share capital. The Tribunal further observed that a scheme of arrangement is a commercial contract between the parties to the scheme and that the supervisory jurisdiction of the Tribunal does not extend to substituting the commercial wisdom of stakeholders who have approved the scheme by the statutory majority.

C. The Broader Line

Nestle India Limited (2008), *Prime Securities Limited* [NCLT Mumbai, C.P. (CAA) No. 1084 of 2020], *Hindustan Unilever Limited* [NCLT Mumbai, TCSP No. 151 of 2017] and *International Paper APPM Limited* [NCLT Hyderabad, CP No. 416 of 2016] reinforce the same line. The Bombay High Court in *Nestle* sanctioned a capital reduction effected through a scheme. The NCLT Mumbai in *Prime Securities* sanctioned a scheme involving reduction of share capital and reorganisation of reserves under Section 230. The NCLT Mumbai in *Hindustan Unilever* sanctioned a reduction and reorganisation of reserves under Section 230. The NCLT Hyderabad in *International Paper APPM* sanctioned a selective capital reduction under a Section 230 scheme. The doctrinal underpinning across these orders is the Supreme Court’s decision in *Miheer H. Mafatlal v. Mafatlal Industries Ltd.* which held that the supervisory jurisdiction of the sanctioning court is peripheral and not appellate, and that

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the commercial wisdom of stakeholders who have approved a scheme by the requisite majority cannot be substituted by the judicial mind. Once the statutory safeguards are complied with and the scheme is not unfair, unreasonable, or contrary to public policy, the sanction must follow.

VII. Decision Framework

The decision between Section 66 and Section 230 for a stand-alone capital reduction turns on five considerations. First, whether the timing of the reduction has commercial or tax consequences. Where the answer is yes, and the appointed date mechanism is therefore valuable, the Section 230 route is the structurally superior choice. Where the answer is no, and the company is indifferent to the date on which the reduction takes effect, the Section 66 route is faster in principle and procedurally lighter, since the regulatory notice base is narrower.

Second, whether the reduction is part of a series of corporate steps that the company anticipates undertaking over the next twelve to eighteen months. Where the company expects to follow the reduction with a demerger, an amalgamation, or another scheme-form transaction, the Section 230 route allows the reduction to be drafted as an integrated step in a composite scheme that addresses the full sequence in a single Tribunal proceeding. Where the reduction is genuinely the only step contemplated, the choice between routes is cleaner and turns primarily on the appointed date analysis.

Third, whether there are creditor sensitivities or sectoral regulator interactions that warrant the broader notice base under Section 230(5). Where the company operates in a regulated sector or has material creditors whose consent is being sought, the wider notice mechanism under Section 230(5) operates as a forum for early surfacing of objections, which can be preferable to encountering them at a later stage. Where the company has no material creditor concerns and operates in an unregulated space, the narrower Section 66 notice base is sufficient.

Fourth, whether the company is in a position to articulate a bona fide commercial rationale for the reduction with sufficient specificity. The Tribunal, in either route, looks for a rationale tied to identifiable commercial outcomes such as the writing off of accumulated losses, the extinguishment of a class of shares that has outlived its utility, or the return of surplus capital to specified stakeholders. Generic language about rationalising the capital structure does not satisfy the Tribunal in either route.

Fifth, whether the company is prepared to demonstrate that creditors are not prejudiced.

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Positive net worth pre-scheme and post-scheme, no reduction in creditor claims, and a record of payment are the markers the Tribunal examines in either route. An auditor's certificate confirming that the accounting treatment complies with the Accounting Standards notified under Section 133 of the Companies Act, 2013, is mandatory under the proviso to Section 230(7) for a scheme route, and is good practice under the Section 66 route as well. Where these conditions are not met, neither route delivers a sanction, and the choice between them becomes academic.

VIII. The Income-Tax Overlay

A note on the choice of company law route would be incomplete without a brief acknowledgment of the income-tax overlay. The tax framework operates on the nature of the transaction, namely the cancellation of shares or the reduction of face value, and not on the statutory route through which the transaction is sanctioned. The Section 66 route and the Section 230 route therefore deliver the same tax consequence. The position, as it has evolved through Supreme Court, High Court, and Tribunal authority, may be summarised under four heads.

First, on the question of *transfer*, the Supreme Court in *Kartikeya V. Sarabhai v. CIT* [TS-24-SC-1997-O] held that the reduction of face value of shares against payment of consideration amounts to an extinguishment of rights in a capital asset and falls within Section 2(47) of the Income-tax Act, 1961. The Supreme Court's order in *PCIT v. Jupiter Capital Pvt. Ltd.* [TS-5028-SC-2025-O], dismissing the Revenue's Special Leave Petition in January 2025, settles the position at the apex level that cancellation of shares on capital reduction is a transfer within Section 2(47), irrespective of whether proportionate shareholding remains unchanged and irrespective of whether consideration is paid.

Second, on the *capital asset*, the Mumbai ITAT in *Carestream Health Inc. v. DCIT* [TS-5270-ITAT-2020(Mumbai)-O] resolved the unit-of-analysis question in favour of the individual share. Each share is an independent capital asset, and the percentage of shareholding is a derivative measure that is not itself the asset. This means that even a proportionate reduction that leaves the shareholder's percentage unchanged constitutes a transfer of capital assets, since each cancelled share is an independent extinguishment event.

Third, on *computation*, the Supreme Court in *CIT v. G. Narasimhan* [TS-5067-SC-1998-O] laid down the bifurcation principle: to the extent the distribution is represented by accumulated profits, it is deemed dividend under Section 2(22)(d), and the balance, being a return of capital, is chargeable under the head "Capital Gains" and computed under Section 48. Where the reduction is a zero-payout reduction, the Mumbai ITAT in *Tata Sons Ltd. v.*

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PCIT [TS-42-ITAT-2024(Mum)] held that the resulting capital loss is real and not notional, since the shareholder's investment has been genuinely eroded, and that the *B.C. Srinivasa Setty* principle has no application where the full value of consideration is ascertainable (even as NIL) and the cost of acquisition is known.

Fourth, on *Section 50CA*, the position is that the provision applies on a plain reading to a capital reduction with payout where the cancelled shares are unquoted and the consideration is less than the fair market value determined under Rule 11UAA. The overlap with the deemed dividend bifurcation under Section 2(22)(d) creates a risk of double taxation, which the better view addresses by applying Section 50CA only to the capital gains component. In a zero-payout reduction, there is a strong argument that Section 50CA does not apply at all. In a face value reduction, Section 50CA may not apply for the separate reason that no complete share is transferred. These three sub-questions remain untested in reported decisions and are the principal friction points on the tax side.

A fuller analysis, with the statutory mapping onto the Income-tax Act, 2025 and the treatment under Sections 70, 71, and 74 on set-off and carry-forward, is available in the author's co-authored article in the *Chamber's Journal, April 2026* (Special Feature on Company Payouts to Shareholders). For the present purpose, the observation that matters is this: the choice between Section 66 and Section 230 does not change the tax characterisation. The tax framework is route-neutral. What the Section 230 route delivers, and the Section 66 route does not, is the ability to fix the appointed date, which in turn allows the tax event to be located in the chosen tax year. The income-tax overlay therefore reinforces, rather than complicates, the structural case for the Section 230 route in fact patterns where the timing of the tax event matters.

IX. The Big Picture

Capital reduction has, in the last few years, quietly transformed from a loss-write-off mechanism into one of the more versatile instruments in the corporate restructuring toolkit. The same statutory device is now deployed across a spectrum of commercial situations that would have been unfamiliar to the practitioner of even a decade ago. Promoter groups use selective capital reduction to squeeze out minority shareholders at a determined price per share, as the Bharti Telecom transaction demonstrated and as a growing line of similar transactions has confirmed. Cash-rich companies use capital reduction as an alternative to buyback, particularly where the buyback route is constrained by the twenty-five per cent limits or by the tax cost of the buyback distribution tax regime. Distressed companies use it to write off accumulated losses against share premium and reserves, rehabilitating the balance sheet and restoring the ability to pay dividends. Private equity sponsors use selective reduction of their preferred class to engineer clean exits without disturbing the common equity, and joint venture partners use it to unwind specific tranches of investment when the partnership reaches a planned milestone or terminates ahead of schedule.

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This expansion of commercial use has changed the practitioner's question. The older question, when capital reduction was an occasional event, was procedural: how does one comply with Section 66. The contemporary question is structural: which of the two available routes delivers the commercial result the company is trying to achieve. The answer turns on the appointed date in most fact patterns, and the appointed date matters more, not less, as the commercial use cases multiply. A squeeze-out priced at a specific board-approved valuation needs the cap table cut-off to align with the valuation date. A surplus distribution timed for a particular financial year needs the reduction to fall within that year's accounts. A PE exit tied to the satisfaction of an indemnity escrow release needs the reduction to be deemed effective on the milestone, not on the Tribunal's calendar. None of this is available under Section 66.

The legislative architecture has, in this respect, kept pace with the commercial reality. The Explanation to Section 230(1), the Section 232(6) appointed date mechanism, the Marshall Sons doctrine, and the MCA Circular together create a coherent framework in which the company can take a stand-alone capital reduction through a scheme of arrangement and fix the moment in time from which the reduction operates. The NCLAT in R. Systems International, and the line of NCLT benches that have followed, have given the framework its judicial backing. The income-tax position, settled at the apex level by the Supreme Court's order in Jupiter Capital and at the Tribunal level by Tata Sons and Carestream Health, has aligned with this expansion. What remains for the practitioner is the structural choice, made consciously and with the commercial objective firmly in view, between the two routes that the statute makes available.

The instrument has come of age. The choice of route should follow.

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