

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH, COURT – V**

CP / 312 (MB) 2023

In the matter of petition under Section
66 of the Companies Act, 2013 and the
Rule 2 of the National Company Law
Tribunal (Procedure for Reduction of
Share Capital of Company) Rules,
2016

AND

In the matter of Reduction of Share
Capital of Festus Properties Private
Limited

Festus Properties Private Limited)

CIN: U70100MH2016PTC280926)

A private limited company incorporated under)

the Companies Act, 2013, having its registered)

office at Ground Floor, Common Service Area)

Kensington Building, ‘A’ Wing, SEZ Building)

Powai, Mumbai – 400076, Maharashtra, India)

... Petitioner Company

Order dated :08.05.2024

Coram:

Hon'ble Ms. Reeta Kohli, Member (Judicial)

Hon'ble Ms. Madhu Sinha, Member (Technical)

Appearance :

For the Petitioner Company: Mr. Hemant Sethi a/w Ms. Devanshi Sethi,
Tanaya Sethi, i/b Hemant Sethi & Co., Advocates

ORDER

1. Heard Learned Counsel for the Petitioner Company and the representative from the Regional Director (WR). No objector has come before the Tribunal to oppose the Petition and nor any party has controverted to any averments made in the Petition.
2. Learned Counsel for the Petitioner Company submits that the Petitioner Company is authorised to undertake reduction of share capital under Article 43 of the Articles of Association in any manner as authorised by passing a special resolution, pursuant to which the Petitioner Company has decided to reduce its issued, subscribed and paid-up equity share capital from Rs. 4,64,64,11,220/- (Rupees Four Hundred and Sixty-Four Crore Sixty-Four Lakh Eleven Thousand Two Hundred and Twenty Only) consisting of 46,46,41,122 (Forty-Six Crore Forty-Six Lakh Forty-One Thousand One Hundred and Twenty-Two only) equity shares of Rs. 10/- (Rupee One Only) each fully paid to Rs. 46,46,41,122/-

(Rupees Forty-Six Crore Forty-Six Lakh Forty-One Thousand One Hundred and Twenty Two only) consisting of 46,46,41,122 (Forty Six Crore Forty Six Lakh Forty One Thousand One Hundred and Twenty Two only) equity shares of Re. 1/- (Rupee One only) each fully paid, by reducing the face value of each equity share from Rs. 10/- (Rupees Ten Only) each to Re. 1/- (Rupee One Only) each fully paid thereby reducing the equity share capital to the extent of Rs. 4,18,17,70,098 (Rupees Four Hundred and Eighteen Crore Seventeen Lakh Seventy Thousand and Ninety Eight only) to set-off the accumulated losses i.e., the debit balance in the profit & loss account is to the extent of Rs. 4,18,17,70,098 (Rupees Four Hundred and Eighteen Crore Seventeen Lakh Seventy Thousand and Ninety-Eight Only) as per the management certified unaudited balance sheet of the company as on June 30, 2023 reflected as a debit balance under “Accumulated deficit” as part of the “Other Equity” (hereinafter referred to as ‘Reduction of Share Capital’). The said special resolution was approved by the equity shareholders representing 100% of the equity paid-up share capital of the Petitioner Company at its extraordinary general meeting held on November 6, 2023. Copy of Resolution is annexed as Annexure P-6 to the Company Petition at page No 202-204.

3. Nature of Business:

The Petitioner Company is in the business of developing, operating and maintaining commercial real estate property in India The main object of the Petitioner Company as per Clause III (A) of the MOA of the Petitioner Company is to purchase or otherwise acquire and hold any

property, lands, buildings, shops, depots, warehouses and other property of any tenure and any interest therein and to manage and let out such properties and to carry on the business of managing and operating Special Economic Zones or Technology Parks In India.

4. The issued, subscribed, and paid-up share capital of the Petitioner Company as on June 30, 2023 is as under:

Authorized Share Capital	Amount in Rs.
50,00,00,000 equity shares of Rs 10/- each	5,00,00,00,000
Total	5,00,00,00,000
Issued, Subscribed & Paid-Up Capital	
46,46,41,122 equity shares of Rs 10/- each	4,64,64,11,220
Total	4,64,64,11,220

Subsequent to June 30, 2023, there has been no change in the issued, subscribed and fully paid-up share capital of the Petitioner Company.

5. The Learned Counsel for the Petitioner Company submits that the rationale for reduction of share capital of the Petitioner Company is:

a) *The Petitioner Company has been incurring losses. As at June 30, 2023, the accumulated losses of the Petitioner Company stood at Rs. 4,68,39,92,855/- (Rupees Four Hundred and Sixty Eight Crore Thirty Nine Lakh Ninety Two Thousand Eight Hundred and Fifty Five only). The accumulated losses are reflected as a*

debit balance under “Accumulated deficit” as a part of “Other Equity”.

- b) *The Petitioner Company is moving the Petition under Section 66 and other applicable provisions of the Act read with the National Company Law Tribunal (Procedure for Reduction of Share Capital of the Company) Rules, 2016 and other applicable National Company Law Tribunal Rules, 2016 to obtain sanction of this Hon'ble Tribunal for reduction of share capital of the Petitioner Company.*
- c) *The Petitioner Company is seeking to reduce its equity share capital from Rs. 4,64,64,11,220/- (Rupees Four Hundred and Sixty Four Crore Sixty Four Lakh Eleven Thousand Two Hundred and Twenty only) consisting of 46,46,41,122 (Forty Six Crore Forty Six Lakh Forty One Thousand One Hundred and Twenty Two only) equity shares of Rs. 10/- (Rupees Ten only) each fully paid to Rs. 46,46,41,122/- (Rupees Forty Six Crore Forty Six Lakh Forty One Thousand One Hundred and Twenty Two only) consisting of 46,46,41,122 (Forty Six Crore Forty Six Lakh Forty One Thousand One Hundred and Twenty Two only) equity shares of Re. 1/- (Rupee One only) each fully paid, by reducing the face value of each equity share from Rs. 10/- (Rupees Ten only) each to Rs. 1/- (Rupee One only) each fully paid thereby reducing the equity share capital to the extent of Rs. 4,18,17,70,098 (Rupees Four Hundred and Eighteen Crore Seventeen Lakh Seventy Thousand and Ninety Eight only).*

- d) *The Petitioner Company believes that utilization of the equity share capital to set off the accumulated losses of the Petitioner Company would result in a fairer reflection of the “Other Equity” in the balance sheet. The right-sizing of the balance sheet is also likely to facilitate the efforts of the Petitioner Company while raising funds and distributing dividends to its shareholders from the profits earned by the Petitioner Company.*
- e) *Utilization of the Equity Share Capital in the manner indicated above would be deemed to be a reduction of share capital of the Petitioner Company, which would therefore require compliance with Section 66 of the Act.*

6. The Article 43 of the Articles of Association of the Petitioner Company authorizes the Petitioner Company to reduce its share capital from time to time by Special Resolution in any manner as authorized by law. The relevant extract of the said article is produced as under:

“43 The Company may, by special resolution, reduce in any manner and with, and subject to, any incident authorised and consent required by law:

- (i) its share capital;*
- (ii) any capital redemption reserve account; or*
- (iii) any share premium account”*

7. The Regional Director (Western Region), Ministry of Corporate Affairs, Mumbai, has filed a report dated April 16, 2024 *inter alia* making the following observations which are produced hereunder to which the Petitioner has filed its responses by way of an Affidavit in rejoinder dated April 17, 2024 and served upon the Regional Director on April 17, 2024.

Para No	Observations of the report of the Regional Director dated April 16, 2024	Response / Undertaking / Submission of the Petitioner Company
7	<p>ROC, Mumbai in his Report No ROC/STA /Sec. 66/206/2023-24 /1052 dated 10.04.2023, <i>inter alia</i> mentioned that there is no complaint/ prosecution/ investigation pending against the company. Further ROC has made observation in para no. 23 of his report.</p> <p>1) The copy of advertisement of Reduction of Capital as per NCLT Rule has not been attached along with the application submitted by the petitioner company. It is not</p>	<p><u>Response to observations in sub-paragraph (1) of paragraph (6):</u></p> <p>It is humbly submitted that the Petitioner Company has published the notice, pursuant to Rule 3(3) of National Company Law Tribunal (Procedure for Reduction of Share Capital of Company) Rules, 2016 in Form RSC-4 in the issue(s) of “Business Standard” in English language and translation thereof in “Navshakti” in Marathi language both having circulation in the State of Maharashtra on</p>

	<p>known whether the petitioner has advertise as per the requirements. The Hon'ble Tribunal may kindly seek clarification from the petitioner as the same.</p> <p>2) Interest of the creditors and minor shareholders / stakeholder should be protected.</p>	<p>January 8, 2024. The copy of the same have been filed with Hon'ble NCLT in Form RSC-5 as Annexure D1 and Annexure D2 and re-attached as Annexure-1 of the affidavit in response of the RD report.</p> <p>Accordingly, the Petitioner Company submits that the stipulation as contained in subparagraph (1) of paragraph (6) above stands fulfilled.</p> <p><u>Response to observations in subparagraph (2) of paragraph (6):</u></p> <p>The Petitioner Company submits that the reduction of capital does not call for sacrifice on the part of any creditor and would not in any way adversely affect the ability of the Petitioner Company to honor its commitments or prejudicially affect the rights of the creditors of the Petitioner Company. The rights and interests of the minor</p>
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	<p>3) Hon'ble NCLT, Mumbai Bench may decide the matter on its merits.</p>	<p>shareholders / stakeholders will not be adversely affected and will be protected.</p> <p>Accordingly, the Petitioner Company submits that the stipulation as contained in sub-paragraph (2) of paragraph (6) above stands fulfilled.</p> <p><u>Response to observations in paragraph sub-paragraph (3) of paragraph (6):</u></p> <p>It is humbly submitted that the above observation of ROC is factual and is not required to be traversed.</p>
<p>7(A)</p>	<p>The tax implication if any arising out of the proposal for reduction is subject to final decision of Income Tax Authorities. The approval of the Company Petition by this Hon'ble Court may not deter the Income Tax Authority to scrutinize the tax return filed</p>	<p><u>Response to observations in sub-paragraph (A) of paragraph (7):</u></p> <p>The Petitioner Company submits that the tax implications, if any, arising out of the proposal for reduction is subject to final decision of the Income Tax Authorities. The approval of the</p>

	<p>by the Company after giving effect to the proposed reduction. The decision of the Income Tax Authority is binding on the petitioner Company, if applicable</p>	<p>company petition by this Hon'ble Tribunal may not deter the Income Tax Authority to scrutinize the tax return filed by the Petitioner Company after giving effect to the proposed reduction.</p>
<p>7(B)</p>	<p>Applicant to submit an Affidavit to the effect that the interest of the creditors and all stakeholders and Government Revenue are protected as well as statutory dues are paid off</p>	<p><u>Response to observations in sub-paragraph (B) of paragraph (7):</u></p> <p>The reduction of capital does not call for sacrifice on the part of any creditor and would not in any way adversely affect the ability of the Petitioner Company to honor its commitments or prejudicially affect the rights of the creditors of the Petitioner Company. Further, the reduction of capital will not have any adverse impact on the ability of the Petitioner Company to pay its statutory dues regularly in accordance with the relevant regulations and will also not affect prejudicially interests of</p>

		<p>Governmental Revenue or any other stakeholders.</p> <p>Accordingly, the Petitioner Company submits that the stipulation as contained in subparagraph (B) of paragraph (7) above stands fulfilled.</p>
7(C)	<p>It is observed that, the company has corporate body shareholders namely Brookfield India Real Estate Trust (The Holding Entity) holding 99.99% shares, but the Company has not filed Form BEN-2 declaring name of the Beneficial Owner of the shareholding as its shareholders on 31.03.2023 in compliance of section 90 of the CA, 2013, thus the Petitioner Company shall undertake to comply with the requirements of Section 90 of the CA, 2013 and Companies</p>	<p><u>Response to observations in subparagraph (C) of paragraph (7):</u></p> <p>The Petitioner Company humbly submits that Brookfield India Real Estate Trust is a listed Real Estate Investment Trust (‘REIT’) regulated by and registered with Securities and Exchange Board of India (‘SEBI’) and holds 100% shares in the Petitioner Company.</p> <p>As per sub-rule (e) of Rule 8 of Companies (Significant Beneficial Owners) Amendment Rules, 2019 (‘SBO Rules’), the provisions of Section 90 of the Act and SBO Rules shall not be</p>

	<p>(Significant Beneficial owners) Rules, 2018</p>	<p>applicable where the share of the reporting company are held “by <i>SEBI registered Investment Vehicles such as mutual funds, alternative investment funds, REIT’s, infrastructure Investment Trust regulated by the SEBI.</i>”</p> <p>Accordingly, the Petitioner Company is not required to file Form BEN-2 in accordance with the provisions of Section 90 of the Act and SBO Rules.</p>
<p>7(D)</p>	<p>The petitioner Company is engaged in the business of Real Estate Business; therefore, petitioner company may be directed to place on record prior approval of RERA</p>	<p><u>Response to observations in sub-paragraph (D) of paragraph (7):</u></p> <p>The Petitioner Company is in the business of developing, operating and maintaining commercial real estate property in Powai, Mumbai. Hence, it is not registered with the Maharashtra Real Estate Regulatory Authority. Accordingly, no intimation or</p>

		approval is required from the Real Estate Regulatory Authority.																								
7(E)	<p>(E) The Petitioner Company be directed to place on record of the Tribunal, the complete details of the accumulated losses till date giving years wise particulars. The petitioner company be directed to place on record the justification as to why the company should continue to spite of continues losses in the business and place on record the current financial position as subject application u/s 66 was filed in December 2023</p>	<p><u>Response to observations in sub-paragraph (E) of paragraph (7):</u></p> <p>The Petitioner Company submits the details of year wise losses till date:</p> <table border="1" data-bbox="911 837 1401 1088"> <caption>(Rupees in millions)</caption> <thead> <tr> <th>Particular</th> <th>Opening as on April 1, 2018</th> <th>*FY 2018-19</th> <th>FY 2019-20</th> <th>FY 2020-21</th> <th>FY 2021-22</th> <th>FY 2022-23</th> <th>As on June 30, 2023</th> </tr> </thead> <tbody> <tr> <td>Profit / (Loss) for the year</td> <td>(241)</td> <td>(906)</td> <td>(1,215)</td> <td>(1,049)</td> <td>(812)</td> <td>(329)</td> <td>(131)</td> </tr> <tr> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td>Closing balance as on June 30, 2023 (4,684)</td> </tr> </tbody> </table> <p><small>*First year of adoption of Ind AS</small></p> <p>The Petitioner Company is seeing a steady growth in its revenue from its business of developing, operating and maintaining commercial real estate property in Powai, Mumbai. It presently owns and operates 'Kensington', a commercial real estate property in Powai, Mumbai. However, due to depreciation and finance costs, the Petitioner Company has incurred losses year on year basis which have been accumulated.</p>	Particular	Opening as on April 1, 2018	*FY 2018-19	FY 2019-20	FY 2020-21	FY 2021-22	FY 2022-23	As on June 30, 2023	Profit / (Loss) for the year	(241)	(906)	(1,215)	(1,049)	(812)	(329)	(131)								Closing balance as on June 30, 2023 (4,684)
Particular	Opening as on April 1, 2018	*FY 2018-19	FY 2019-20	FY 2020-21	FY 2021-22	FY 2022-23	As on June 30, 2023																			
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							Closing balance as on June 30, 2023 (4,684)																			

		<p>The Petitioner Company expects that the business situation will improve from financial year 2024-25 onwards and believes that utilization of the equity share capital to set off the accumulated losses would result in a fairer reflection of the “Other Equity” in the balance sheet. The right-sizing of the balance sheet is also likely to facilitate the efforts of the Petitioner Company while raising funds and distributing dividends to its shareholders from the profits earned by the Petitioner Company.</p> <p>Also, the books of accounts of the Petitioner Company as on March 31, 2024 are under finalisation, the closing balance of accumulated losses as per management estimates as on March 31, 2024 would be Rs 330/- millions.</p>
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8. The observations made by the Regional Director on behalf of the Central Government have been explained by the Petitioner Company in Para 7.
9. Considering the entire facts and circumstances of the case and report filed by Regional Director, rejoinder affidavit filed by the Petitioner Company in response to Regional Director's observations and on perusal of the documents produced on record, the Company Petition is allowed.
10. The Petitioner Company undertakes to file the certified copy of the order and form of minutes duly certified by the Designated Registrar of this Tribunal with the Registrar of Companies within 30 days from the date of receipt of the certified Order from the Registry of this Tribunal.
11. The Petitioner Company to publish the notices about registration of order and minutes by the concerned Registrar of Companies, Mumbai, Maharashtra in two newspapers namely "Business Standard" in English language and translation thereof in "Navshakti" in Marathi language both having circulation in the State of Maharashtra within 30 days of registration of the Order.
12. All concerned regulatory authorities to act on production of certified copy of this order duly signed by Designated Registrar of this Tribunal.
13. The minutes set forth hereto be and is hereby approved.

Form of Minutes

“The paid-up share capital of Festus Properties Private Limited is henceforth Rs. 46,46,41,122/- (Rupees Forty Six Crore Forty Six Lakh Forty One Thousand One Hundred and Twenty’ Two only) consisting of 46,46,41,122 (Forty Six Crore Forty Six Lakh Forty One Thousand One Hundred and Twenty Two only) equity shares Re. 1/- (Rupee One only) each fully paid, reduced from Rs. 4,64,64,11,220/- (Rupees Four Hundred and Sixty Four Crore Sixty Four Lakh Eleven Thousand Hundred and Twenty only) consisting of 46,46,41,122 (Forty Six Crore Forty Six Lakh Forty One Thousand One Hundred and Twenty Two only) equity shares of Rs. 10/- (Rupees Ten only) each fully paid pursuant by reducing the face value of each share from Rs.10 (Rupees Ten only) each to Re. 1/- (Rupee One only) each fully paid up.

At the date of the registration of this minute, 46,46,41,122 (Forty Six Crore Forty Six Lakh Forty One Thousand One Hundred and Twenty Two only) equity shares of Re. 1/- each are issued and outstanding and deemed to have been fully paid-up.”

14. Ordered Accordingly.

Sd/-

Madhu Sinha

Member (Technical)

/Priyanka/

Sd/-

Reeta Kohli

Member (Judicial)