

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH (COURT- I) CHENNAI**

ATTENDANCE CUM ORDER SHEET OF THE HEARING
HELD ON **28.06.2024** THROUGH VIDEO CONFERENCE

**PRESENT: HON'BLE SHRI. SANJIV JAIN, MEMBER (JUDICIAL)
HON'BLE SHRI VENKATARAMAN SUBRAMANIAM, MEMBER (TECHNICAL)**

Application No :
Petition No : CP(CA)/15(CHE)/2024
Name of Petitioner :
& Kosmo One Business Park Pvt Ltd
Name of Respondent :
Section : Sec 66 of CA, 2013

ORDER

Present: Mr. R.Inbaraju, Ld. Counsel for Petitioner.

Vide separate order pronounced in open Court, the petition is allowed and the
scheme of reduction of share capital is approved.

File be consigned to records.

-sd-
**[VENKATARAMAN SUBRAMANIAM]
MEMBER (TECHNICAL)**

MS

-sd-
**[SANJIV JAIN]
MEMBER (JUDICIAL)**

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH - I, CHENNAI**

CP/15(CHE)/2024

*Under Section 66 read with Section 52 & 61 and other applicable Provisions of
the Companies Act, 2013*

In the matter of *Kosmo One Business Park Private Limited*

KOSMO ONE BUSINESS PARK PRIVATE LIMITED

CIN: U74899TN2005PTC125377

Having its Registered Office at

Plot No.14, 3rd Main Road,

Ambattur Industrial Estate, Ambattur,

Chennai – 600 058

Represented by Mr.Nishant Kumar Singh, Authorised Signatory

... Petitioner Company

Order Pronounced on 28th June 2024

CORAM

SANJIV JAIN, MEMBER (JUDICIAL)

VENKATARAMAN SUBRAMANIAM, MEMBER (TECHNICAL)

For Applicant(s): R.Inbaraju, Advocate

For Regional Director: Avinash Krishnan Ravi, Advocate

ORDER

(Hearing Conducted through Hybrid Mode)

This Application has been filed by *Kosmo One Business Park
Private Limited* under the provisions of Section 66 read with Section

52 & 61 and applicable provisions of the Companies Act, 2013, seeking reliefs as follows;

a. That the Capital Reduction resolved on January 27, 2024 by Special Resolution set out in paragraph 13 above be confirmed by this Hon'ble Tribunal, so as to be binding on all shareholders and creditors of the Petitioner Company;

b. That this Hon'ble Tribunal may issue notice to Central Government, Ministry of Corporate Affairs, represented by the Regional Director, Registrar of Companies, Reserve Bank of India and to the Creditors of the Petitioner company:

c. That this Hon'ble Tribunal may issue directions for publication in the newspapers viz Business Standard (English Edition) and Dina Mani (Tamil Edition) ;

d. That to this end all inquiries and directions necessary and proper be made and given:

e. That the proposed minute be approved by the Hon'ble Tribunal;

f. That notwithstanding the Capital Reduction as mentioned above, the Petitioner company shall not be required to add "and reduced" as a suffix to its name and the Petitioner Company shall continue in its existing name; and

g. That this Hon'ble Tribunal may pass such further orders as it may deem fit and proper in the facts and circumstances of the case.

2. The main objects of the Company as set out in the Clause of the Memorandum of Association of the Company, are briefly reproduced as under;

a) *To acquire, by purchase, lease, exchange or otherwise land or other movable or immovable property of any description in India or abroad or any rights over or connected with land or such property and to construct, develop, build, reconstruct, alter, improve, decorate furnish and maintain townships, housing and commercial premises, hotels, resorts, hospitals, educational institutions, recreational facilities, infrastructure, markets, offices, flats, apartments, etc with all amenities, conveniences and facilities and to manage, hold, sell, lease and deal with the same in any manner whatsoever etc.*

3. The Authorized capital of the Petitioner Company as on 31.03.2023 is Rs. 44,00,00,000/- (Rupees Forty Four Crore only) divided into 1,00,00,000 (One Crore) equity shares of Rs 10/- (Rupees Ten only) each and 3,40,00,000 (Three Crore Forty Lakh) preference shares of Rs. 10/- (Rupees Ten only) each. The issued, subscribed and paid-up capital of the Petitioner Company as on 31.03.2023 is Rs. 8,69,44,210/- (Rupees Eight Crore Sixty Nine Lakh Forty Four Thousand Two Hundred Ten only) divided into 86,94,421 (Eighty Six Lakh Ninety Four Thousand Four Hundred Twenty One) equity shares of Rs. 10/- (Rupees Ten only) each.

4. The Statutory Auditors of the Petitioner Company by their certificate dated 25.01.2024 annexed as *Annexure "15"* to the

Application have confirmed that the Accounting Treatment proposed by the Company is in conformity with the Accounting Standards specified by the Central Government under Section 133 of the Act, 2013.

5. The Statutory Auditors of the Applicant Company have filed a Certificate which is appended as "*Annexure 13*" to the effect that the Petitioner Company as on 22.01.2024 has one (1) Secured Creditor having value of Rs.5,35,06,60,758 (Rupees Five Hundred and Thirty Five Crore Six Lakh Sixty Thousand Seven Hundred and Fifty Eight Only) and has 96 Unsecured Creditors having value of Rs.65,32,70,454/- (Rupees Sixty Five Crore Thirty Two Lakh Seventy Thousand Four Hundred and Fifty Four Only).

6. It is stated that the company has not accepted any deposits and therefore there are no arrears in repayment of any deposit or interest thereon as on the date of Petition. A declaration to that effect has been filed by the Directors of the company which is placed at *Annexure 14* of the typed set of the Petition. The Statutory Auditors have verified and certified that the company has no arrears in repayment of deposit

or interest and the same is placed at **Annexure 14** of the typed set of the Petition.

7. It is stated that **Article 4.6** of the Articles of Association of the Company empowers the Petitioner Company that it may from time to time, by special resolution, reduce its capital in any manner permitted by law. The relevant Article 4.6 is reproduced as under:

4.6 Reduction of Share Capital

(n) Subject to other provisions of these Articles and the applicable provisions of the Act, the Company may, from time to time and, by special resolution, reduce its share capital and any capital redemption reserve fund account or share premium account in any manner as authorised by the Applicable Law, and, in particular, the Share Capital may be paid off on the footing that it may be called up again or otherwise. These Articles shall not derogate from any power that the Company may otherwise have in this regard under the applicable provisions of the Act.'

8. It is stated that there are no audit qualifications, reservations or adverse remarks made by the statutory auditor of the Petitioner Company in their report for the financial year ended 31.03.2023. A summary of the assets and liabilities of the Petitioner Company as per the latest audited balance sheet for the financial year ended on 31.03.2023 and limited reviewed balance sheet as on 31.12.2023 is given below:

(All amounts are in Indian Rupees Million)

Liabilities	March 31, 2023	December 31, 2023	Assets	March 31, 2023	December 31, 2023
Equity share capital	86.94	86.94	Non-current assets	3,002.14	2,971.21
Reserves and surplus	(2,623.56)	(2,558.66)*	Current assets	635.56	2,480.35
Non-current liabilities	5,414.66	5,185.63			
Current liabilities	759.66	2,737.65			
Total	3,637.70	5,451.56	Total	3,637.70	5,451.56

*Includes security premium of Rs 5,47,35,90,315/- and accumulated losses of Rs 136,22,02,288/-.

9. It is stated that the Petitioner Company is seeking to reduce its share capital in two parts:

Capital Reduction – Part I

(1) Reduction of equity share capital from Rs 8,69,44,210 (Rupees Eight Crore Sixty Nine Lakh Forty Four Thousand Two Hundred and Ten only) consisting of 86,94,421 equity shares of Rs 10/- (Rupees Ten only) each fully paid up, to Rs 4,95,58,199.70 (Rupees Four Crore Ninety Five Lakh Fifty Eight Thousand One Hundred and Ninety

Nine point Seven Zero only) consisting of 86,94,421 equity shares of Rs 5.70/- (Rupees Five point Seven Zero only) each fully paid up; by reducing the face value of each share from Rs 10/- (Rupees Ten only) to Rs 5.70 (Rupees Five point Seven Zero only) each fully paid up thereby reducing the equity share capital to the extent of Rs 3,73,86,010.30/- (Rupees Three Crore Seventy Three Lakh Eighty Six Thousand and Ten point Three Zero only);

(ii) The Petitioner Company proposes to undertake reduction of paid-up capital to the extent of Rs. 4.30/- (Rupees Four point Three Zero only) per share and pay all the equity shareholders an amount of Rs. 230/- (Rupees Two Hundred and Thirty only) per share, aggregating to Rs. 1,99,97,16,830.00 (Rupees One Hundred and Ninety Nine Crore Ninety Seven Lakh Sixteen Thousand Eight Hundred and Thirty only) comprising of the face value of Rs. 3,73,86,010.30 (Rupees Three Crore Seventy Three Lakh Eighty Six Thousand and Ten point Three Zero only) for the paid- up equity share capital being reduced on each share;

(ii) The amount of Rs. 1,96,23,30,819.70 (Rupees One Hundred and Ninety Six Crore Twenty Three Lakh Thirty Thousand Eight Hundred

and Nineteen point Seven Zero only) being the difference between the total amount payable on reduction of share capital of Rs. 1,99,97,16,830.00/- (Rupees One Hundred and Ninety Nine Crore Ninety Seven Lakh Sixteen Thousand Eight Hundred and Thirty only) to all the equity shareholders and Rs. 3,73,86,010.30/- (Rupees Three Crore Seventy Three Lakh Eighty Six Thousand and Ten point Three Zero only) being the aggregate face value of paid-up equity share capital being reduced, shall be reduced from the balance available in the securities premium account of the Petitioner Company (**Capital Reduction - Part I**); and

Capital Reduction - Part II

(iv) Reduction of balance of Rs. 1,36,22,02,288/- (Rupees One Hundred and Thirty Six Crore Twenty Two Lakh Two Thousand Two Hundred and Eighty Eight only) from the amount available in the securities premium account of the Petitioner Company for setting-off against the entire accumulated losses (i.e, debit balance of profit and loss account) of Rs. 1,36,22,02,288/- (Rupees One Hundred and Thirty Six Crore Twenty Two Lakh Two Thousand Two Hundred and Eighty Eight only) as per the limited reviewed financial statements for the

period ended December 31, 2023 reflecting as debit balance under "Reserves and Surplus – Retained earnings" as a part of "Other Equity". **(Capital Reduction- Part II)**

10. Rationale of Capital Reduction

10.1. It is stated that the reasons for reduction of share capital is that ;

Capital Reduction – Part I

(i) The Board of Directors of the Petitioner Company are of the opinion that the current scale of the Petitioner Company's operations does not necessitate substantial capital, and any excess capital should be returned to shareholders. The reduction of share capital would unlock the investment of the equity shareholders and return a part of the capital. Also, the Petitioner Company has sufficient funds to make payment to shareholders for the 'Capital Reduction Part I' and thereafter it also has sufficient assets to meet its liabilities in the ordinary course of business; and

Capital Reduction - Part II

(ii) The Petitioner Company has incurred losses over a period of time and intends to write off the entire accumulated losses against the

balance available in the securities premium account in the Capital Reduction - Part II. The Petitioner Company expects the business situation to improve in future and believes that utilization of balance in the securities premium account to set-off the entire accumulated losses would result into a fairer reflection of the "Other Equity" in the balance sheet. The Petitioner Company proposes to re-align the relationship between its capital and assets.

11. It is stated that the Board of Directors of the Petitioner Company, at the meeting dated 25.01.2024 and pursuant to the provisions of Section 66 read with Section 52, Section 61 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 have resolved to approve the proposed Capital Reduction. Accordingly, pursuant to Capital Reduction, the paid-up equity share capital of the Company shall stand reduced by an amount of Rs 3,73,86,010.30 (Rupees Three Crore Seventy Three Lakh Eighty Six Thousand and Ten point Three Zero only) and the issued, subscribed and paid up equity share capital of the Petitioner Company

henceforth, shall be 86,94,421 equity shares of Rs 5.70 (Rupees Five point Seven Zero only) each fully paid up; and the securities premium account shall be reduced from Rs 5,47,35,90,315/- (Rupees Five Hundred Forty Seven Crore Thirty Five Lakh Ninety Thousand Three Hundred and Fifteen only) to Rs 2,14,90,57,207.36/- (Rupees Two Hundred and Fourteen Crore Ninety Lakh Fifty Seven Thousand Two Hundred and Seven point Three Six only).

12. It is stated that the Board of Directors has recommended the amount payable on capital reduction – Part I on the basis of valuation report dated 23.01.2024 submitted by CA Ashat Jain, IBBI Registered Valuer.

13. It is stated that the pre and post capital reduction mechanics of the Petitioner Company is summarized as follows:

(All amounts are in Indian Rupees Million)

Particulars	Pre-capital reduction	Adjustments	Post-capital reduction
Paid-up share capital	86.94	(37.39) ^a	49.56
Securities premium account	5,473.59	(3,324.53) ^b	2,149.06
Retained earnings	(1,362.20)	1,362.20 ^c	-

a. Reduction of an aggregate amount of Rs 3,73,86,010.30 /- (ie Rs 4.30/- per share) paid to all the shareholders pursuant to Capital Reduction - Part I.

b. Debiting (i) aggregate of Rs 1,96,23,30,819.70/- (ie 225.70/- per share) paid to all the shareholders pursuant to Capital Reduction - Part I; and (ii) adjusting entire accumulated losses of Rs 1,36,22,02,288/- pursuant to Capital Reduction - Part II.

c. Setting-off the entire accumulated losses of Rs 1,36,22,02,288/- against balance available in the securities premium account pursuant to Capital Reduction - Part II.

14. It is stated that as per Section 52 of the Act, the balance in the securities premium account can be applied only for the purpose specified therein, and any utilization of balance available in the securities premium account for any other purpose would be construed as reduction in share capital and the provisions of Section 66 of the Act read with the National Company Law Tribunal (Procedure for Reduction of Share Capital of the Company) Rules, 2016 shall apply. Since, setting off the accumulated losses by utilizing the balance in the securities premium do not fall under exceptions as

provided under sub- section (2) of Section 52 of the Act, the securities premium account of the Petitioner Company will be construed as the paid-up share capital for the purpose of reduction of share capital in the present Petition.

15. It is stated that on 27.01.2024, a Special Resolution was passed by the Equity Shareholders of the petitioner company at the Extra Ordinary General Meeting (EoGM) held at the Registered Office of the Petitioner Company under Section 66(1) read with Section 52, 61 and Section 114 of the Companies Act, 2013. The Special Resolution is reproduced as under;

" RESOLVED THAT pursuant to the provisions of Section 66, Section 52 and Section 61 and all other applicable provisions, if any, of the Companies Act, 2013 ('Act') and the relevant rules made thereunder read with the National Company Law Tribunal (Procedure for Reduction of Share Capital) Rules, 2016 (including any statutory modifications, amendment or re-enactment thereof for the time being in force) and in terms of Article 4.6 of the Articles of Association of the Company and subject to confirmation/sanction of the Hon'ble National Company Law Tribunal, Chennai Bench ('NCLT') and subject to the sanction and/or approvals of the appropriate authorities as may be considered necessary, and such other terms and conditions and modifications, if any, as may be prescribed by such authorities while granting approval or consents or permissions and as may be agreed by the Board of Directors, approval of the shareholders of the Company be and is hereby accorded for:

Capital Reduction - Part I

(i) reduction of the issued, subscribed and paid up equity share capital of the Company from Rs 8,69,44,210 (Rupees Eight Crore Sixty Nine Lakh Forty Four Thousand Two Hundred and Ten only) consisting of 86,94,421 equity shares of Rs 10/- (Rupees Ten only) each fully paid up, to Rs 4,95,58,199.70 (Rupees Four Crore Ninety Five Lakh Fifty Eight Thousand One Hundred and Ninety Nine point Seven

Zero only) consisting of 86,94,421 equity shares of Rs 5.70 (Rupees Five point Seven Zero only) each fully paid up;

(ii) thereby reducing the paid-up equity share capital to the extent of Rs 3,73,86,010.30/- (Rupees Three Crore Seventy Three Lakh Eighty Six Thousand and Ten point Three Zero only) by proportionately paying to all the equity shareholders an amount of Rs 230/- (Rupees Two Hundred and Thirty only) per share, aggregating to Rs 1,99,97,16,830.00/- (Rupees One Hundred and Ninety Nine Crore Ninety Seven Lakh Sixteen Thousand Eight Hundred and Thirty only) comprising of the face value of Rs 3,73,86,010.30/- (Rupees Three Crore Seventy Three Lakh Eighty Six Thousand and Ten point Three Zero only) for the paid-up equity share capital being reduced; and

(iii) the amount of Rs 1,96,23,30,819.70/- (Rupees One Hundred and Ninety Six Crore Twenty Three Lakh Thirty Thousand Eight Hundred and Nineteen point Seven Zero only) being the difference between the total amount payable on reduction of share capital and of Rs 1,99,97,16,830.00/- (Rupees One Hundred and Ninety Nine Crore Ninety Seven Lakh Sixteen Thousand Eight Hundred and Thirty only) to all the equity shareholders and Rs 3,73,86,010.30/- (Rupees Three Crore Seventy Three Lakh Eighty Six Thousand and Ten point Three Zero only) being the aggregate face value of paid-up equity share capital being reduced, shall be debited to the securities premium account of the Company (**Capital Reduction - Part I**); and

Capital Reduction - Part II

(iv) utilizing Rs 1,36,22,02,288/- (Rupees One Hundred and Thirty Six Crore Twenty Two Lakh Two Thousand Two Hundred and Eighty Eight only) out of the balance available in the securities premium account of the Company to set off the entire accumulated losses (i.e. debit of the balance of profit and loss account) of Rs 1,36,22,02,288/- (Rupees One Hundred and Thirty Six Crore Twenty Two Lakh Two Thousand Two Hundred and Eighty Eight only) as per the limited reviewed financial statements for the period ended December 31, 2023 reflected as debit balance under "Reserves and Surplus - Retained Earnings as a part of the "Other Equity". (**Capital Reduction - Part II**)

(Capital Reduction - Part I and Capital Reduction - Part II is collectively, referred to as '**Capital Reduction**')

RESOLVED FURTHER THAT the Board had appointed CA Akshat Jain, IBBI Registered Valuer, to determine the amount payable per share for Capital Reduction - Part I and such amount payable to all the shareholders of the Company shall be made within such number of days, as may be required under the applicable law or as may be directed by the Hon'ble Tribunal on the Reduction of Share Capital becoming effective. All such payments will be made by cheque, demand draft, pay order, warrant, National Electronic Funds Transfer, Real Time Gross Settlement or

Immediate Payment Service (as the case may be) or any other mode as decided by the Board to all the shareholders of the Company.

RESOLVED FURTHER THAT upon confirmation of the Capital Reduction as stated above by the NCLT, (i) the paid-up equity share capital of the Company shall stand reduced by an amount of Rs 3,73,86,010.30/- (Rupees Three Crore Seventy Three Lakh Eighty Six Thousand and Ten point Three Zero only) and the issued, subscribed and paid up equity share capital of the Company henceforth, shall be 86,94,421 equity shares of Rs 5.70 (Rupees Five point Seven Zero only) each fully paid up; and the securities premium account shall be reduced from Rs 5,47,35,90,315/- (Rupees Five Hundred Forty Seven Crore Thirty Five Lakh Ninety Thousand Three Hundred and Fifteen only) to Rs 2,14,90,57,207.36/- (Rupees Two Hundred and Fourteen Crore Ninety Lakh Fifty Seven Thousand Two Hundred and Seven point Three Six only).

RESOLVED FURTHER THAT all the shareholders prior to Capital Reduction will continue to remain shareholders of the Company pursuant to the Capital Reduction.

RESOLVED FURTHER THAT pursuant to the provisions of Section 13, 61 and other applicable provisions, if any, of the Act read with relevant rules made thereunder (including any statutory modifications or re-enactment thereof for the time being in force) and other applicable laws, rules, regulations for the time being in force, if any, prescribed by any relevant authorities from time to time, to the extent applicable, subject to the provisions of the Memorandum and pursuant to Article 4.6 of the Articles of Association of the Company, and subject to the approval and confirmation of NCLT or any other competent authority as may be specified in this regard, the consent of the members of the Company be and is hereby accorded for reclassification of the share, pursuant to subdivision of the face value of the equity shares of the Company from existing Rs. 10/- (Rupees Ten only) each to equity shares with face value of Rs. 5.70/- (Rupees Five point Seven Zero only) each.

RESOLVED FURTHER THAT pursuant to the subdivision of the equity shares of the Company, the authorised share capital (equity) consisting of equity shares of Rs. 10/- (Rupees Ten only) each shall stand subdivided from 1,00,00,000 equity shares of Rs. 10/- (Rupees Ten only) each to 1,75,43,859 equity shares of Rs. 5.70/- (Rupees Five point Seven Zero only).

RESOLVED FURTHER THAT consequently, pursuant to Section 13 and other applicable provisions of the Act, substitution of the existing clause V of the Memorandum of Association of the Company by the following:

'The Authorised Share Capital of the Company is Rs. 44,00,00,000/- (Rupees Forty Four Crore only) divided into 1,75,43,859 (One Crore Seventy Five Lakh Forty Three Thousand Eight Hundred and Fifty Nine) Equity Shares of Rs 5.70/- (Rupees

Five point Seven Zero Only) each and 3,40,00,000 (Three Crore Forty Lakh) Preference Shares of Rs 10/- (Rupees Ten only) each.'

'RESOLVED FURTHER THAT the balances in the shareholder's funds post the proposed reduction shall be as follows:

(All amounts are in Indian Rupees Million)

Particulars	Pre-capital reduction	Adjustments	Post-capital reduction
Paid-up share capital	86.94	(37.39)	49.56
Securities premium account	5,473.59	(3,324.53)	2,149.06
Retained earnings	(1,362.20)	1,362.20	-

RESOLVED FURTHER THAT upon Capital Reduction - Part 1, the Company shall send appropriate instructions to the depository participants and to do such acts, deeds, matters things as may be required in connection with the above.

RESOLVED FURTHER THAT approval of the Company be and is hereby granted for execution of appropriate documents, papers, deeds and other writings on behalf of the company as may be necessary or incidental thereto in this regard and that the Board of Directors be authorized to do such acts, deeds, matters things as may be required in connection with the above.

RESOLVED FURTHER THAT any of the Directors or Mr. Sunil Kumar Tibra or Mr. Kakkayur Palliyil Vinu or Mr. Nishant Kumar Singh, Authorised Signatories of the Company be and are hereby severally authorized to sign, execute and deliver, file petitions, pleadings, forms, reports, applications, affidavits, declarations, certificates, and all other documents, deeds and writings and to do all such acts, matters, deeds and things as may be necessary or desirable including any directions for settling any question or doubt or difficulty whatsoever that may arise, for the purpose of giving effect to the Capital Reduction of the Company as placed before the meeting or to any modification thereof.

RESOLVED FURTHER THAT a certified true copy of the aforesaid resolution be issued as and when necessary, under the signature of any of the directors of the Company."

16. It is stated that the Petitioner Company has 3 (three) equity shareholders. A list of equity shareholders of the Petitioner Company as on January 27, 2024 certified by a Chartered Accountant is annexed and marked as Annexure 11 to this Petition. All the equity shareholders were present through their authorized representative at the extraordinary general meeting of the Petitioner Company and voted in favour of the resolution approving the Capital Reduction.

17. The Shareholding structure showing number of equity shares held prior to and after the proposed capital Reduction by each of the shareholder is tabulated below for reference:

SI No	Name of the Equity shareholders	Shareholding prior to Reduction of the Share Capital	Shareholding post Reduction of the Share Capital	Number of equity shares proposed to be cancelled/ extinguished
1.	BREP Asia SG L&T Holding III (NQ) Pte. Ltd.	85,98,108	85,98,108	Nil
2.	BREP Asia II SBS Chennai Holding (NQ) Ltd.	81,964	81,964	Nil
3.	BREP VIII SBS Chennai Holding (NQ) Ltd.	14,349	14,349	Nil
Total		86,94,421	86,94,421	-

Note: There is no change in the number of equity shares held by each shareholder, as the Capital Reduction - Part I only envisaged reduction in face valuer per share from Rs 10/- to Rs 5.70/- per share.

18. The amount available under securities premium account prior to and after capital reduction is furnished below for reference:

Amounts to be debited	Amount available (Amount in Rs)	Amount proposed to be utilized (Amount in Rs)	Balance post Reduction of the Share Capital (Amount in Rs)
Securities premium account	5,473.59	(3,324.53)	2,149.06

19. It is stated that that the Capital Reduction envisages reduction in the face value of equity shares from Rs.10/- (Rupees Ten Only) each to Rs.5.70 (Rupees Five point Seven Zero only) and utilising the balance available in the securities premium account to set off the entire accumulated losses reflected in 'Reserves and Surplus Retained Earnings' as a part of 'Other Equity' as on 31.12.2023, requires to comply with procedures as set out in Section 66, Section 52 and Section 61 of the Act and other applicable provisions, if any, and in accordance with Article 4.6 of the Articles of Association of the Petitioner Company and subject to the approval and confirmation of

the this Tribunal or any other competent authority as may be prescribed.

20. It is stated that the Capital Reduction - Part I will result in an outflow of Rs.1,99,97,16,830.00/- (Rupees One Hundred and Ninety Nine Crore Ninety Seven Lakh Sixteen Thousand Eight Hundred and Thirty only) and the Capital Reduction - Part II involves reduction of the paid-up equity share capital (i.e., securities premium account) which is lost or is unrepresented by available assets. It is clarified that the proposed Capital Reduction does not involve extinction, reduction or diminution of any liability in respect of unpaid share capital. The proposed Capital Reduction would not in any way adversely affect the ordinary operations of the Petitioner Company or the ability of the Petitioner Company to honor its commitments or to pay its debts in the ordinary course of business. Further, there is no reduction in the amount payable to any of the creditors and no compromise or arrangement is contemplated with the creditors. Consequently, the reduction will not prejudicially affect the rights of the creditors of the Petitioner Company.

21. It is stated that upon sanction of the company petition filed under Section 66, read with Section 52 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 the Company shall account for Capital Reduction in its books of accounts in accordance with applicable accounting standards and other accounting principles generally accepted in India, as follows:

Capital Reduction - Part 1

- i. Debit to 'Equity Share Capital by 3,73,86,010.30 (Rupees Three Crore Seventy Three Lakh Eighty Six Thousand and Ten point Three Zero only) pursuant to the reduction in the paid up face value of 86,94,421 equity shares from Rs 10 (Rupees Ten only to Rs 5.70 (Rupees Five point Seven Zero Only);
- ii. Credit to 'Cash and Bank Balances' by Rs 1,99,97,16,830.00 (Rupees One Hundred and Ninety Nine Crore Ninety Seven Lakh Sixteen Thousand Eight Hundred and Thirty only) representing the amount of refund of excess share capital to the Company's equity shareholders; and

iii. Debit to 'Securities Premium Account' aggregating to Rs 1,96,23,30,819.70 (Rupees One Hundred and Ninety Six Crore Twenty Three Lakh Thirty Thousand Eight Hundred and Nineteen point Seven Zero only) representing the difference between the total amount payable on reduction of share capital of Rs 1,99,97,16,830.00 (Rupees One Hundred and Ninety Nine Crore Ninety Seven Lakh Sixteen Thousand Eight Hundred and Thirty only) to all the equity shareholders (as stated in (ii) above) and Rs 3,73,86,010.30 (Rupees Three Crore Seventy Three Lakh Eighty Six Thousand and Ten point Three Zero only) being the aggregate face value of paid-up equity share capital being reduced (as stated in (i) above);

Capital Reduction - Part II

iv. The entire balance of accumulated losses / negative balance of retained earnings amounting to Rs 1,36,22,02,288 (Rupees One Hundred and Thirty Six Crore Twenty Two Lakh Two Thousand Two Hundred and Eighty Eight only) as at December 31, 2023 presented under 'Reserves and Surplus - Retained Earnings' as part of 'Other Equity' shall be credited with a corresponding debit to the Securities Premium to adjust the Accumulated Losses.

22. We have heard the Learned Counsel for the Petitioner Company and Perused the documents placed on record.

23. This Tribunal vide its order dated 16.04.2024, *inter alia* had directed the Petitioner Company to give notice of the instant application to the Ministry of Corporate Affairs through the office of the Regional Director, Registrar of Companies, Chennai, Reserve Bank of India, Income Tax Department and to the Creditors and any other relevant sectors and to cause the publication of notice in the prescribed form.

24. In pursuance of the same, the Petitioner Company, has filed an Affidavit of Service before this Tribunal on **03.05.2024** vide **S.R.No.2247** in relation to the directions issued by the Tribunal. A perusal of the same manifests the fact that the Petitioner Company had issued a newspaper advertisement on 26.04.2024 in "Business Standard" (English) and "Makkal Kural" (Tamil).

25. Consequent thereto, upon receipt of the notice, the Regional Director has submitted its observation dated **04.06.2024**, that the Directors as well as the Auditors of the Company have furnished the

certificate to the effect that the Company has no arrears in repayment of deposits or interest thereon. Further, it is stated in the report that the Company is regular in filing the statutory returns and that there is no complaint / prosecution / investigation / inspection pending against the Company. RD in para 10 of its Report has stated as follows;

10. The application for reduction of share capital has been examined and it is has been decided not to make any objection to the proposed reduction of share capital and it is therefore prayed that this Hon'ble Tribunal may dispose of the matter on merits and pass such order / orders as deemed fit and proper.

26. Despite notice having been served to Income Tax Department, and Reserve Bank of India on and paper publication made on 26.04.2024 in Business Standard (All India Edition) in English and Makkal Kural (Tamil Nadu Edition) in Tamil, there is no representation from the other statutory Authorities viz, Department of Income Tax and Reserve Bank of India. Under such circumstances this Tribunal in terms of provisions of the Companies Act, 2013 presumes that the Department of Income Tax and Reserve Bank of India does not have any objection to the sanction of the Scheme of Reduction of Share Capital. A copy of the Notice served to the Statutory Authorities viz, Department of Income Tax and Reserve

Bank of India is placed at Affidavit of Service typeset vide **S.R.No.2247** dated **03.05.2024**.

27. It is also seen from the Affidavit of Service dated **03.05.2024** vide **S.R.No.2247** that the Petitioner Company has served notice to 1 Secured Creditor and 96 Unsecured Creditors and the same is placed at **Annexure-6** of the Affidavit of Service typeset. Till date they have not raised any objection in this regard.

28. In the facts and circumstances of the matter, this Tribunal is of the view that it is just and proper to confirm the Reduction of Share capital of the Petitioner Company as resolved by the members of the Company by passing a special resolution and by way of the consent in the form of affidavit. It is ordered accordingly. This Tribunal hereby approves the proposed form of Minutes to be registered under section 66 (5) of the Companies Act, 2013 as given in the application as follows:

“The paid-up share capital of Kosmo One Business Park Private Limited is henceforth Rs. 4,95,58,199.70 (Rupees Four Crore Ninety Five Lakh Fifty Eight Thousand One Hundred and Ninety Nine point Seven Zero only) consisting 86,94,421 (Eighty Six Lakh Ninety Four Thousand Four Hundred and Twenty One) equity shares of Rs. 5.70 (Rupees Five point Seven Zero only) each as reduced from Rs. 8,69,44,210 (Rupees Eight

Crore Sixty Nine Lakh Forty Four Thousand Two Hundred and Ten only) comprising 86,94,421 (Eighty Six Lakh Ninety Four Thousand Four Hundred and Twenty One) equity shares of Rs. 10/- (Rupees Ten only) each fully paid-up by reducing the face value of each share from Rs. 10/- (Rupees Ten only) to Rs. 5.70/- ((Rupees Five point Seven Zero only)) each fully paid-up.

The securities premium account of Kosmo One Business Park Private Limited is henceforth Rs. 2,14,90,57,207.36/- (Rupees Two Hundred and Fourteen Crore Ninety Lakh Fifty Seven Thousand Two Hundred and Seven point Three Six only) as reduced from Rs. 5,47,35,90,315/- (Rupees Five Hundred Forty Seven Crore Thirty Five Lakh Ninety Thousand Three Hundred and Fifteen only). At the date of registration of this minute, 86,94,421 (Eighty Six Lakh Ninety Four Thousand Four Hundred and Twenty One) equity shares of Rs. 5.70/- (Rupees Five point Seven Zero only) each are issued and deemed to have been fully paid-up..”

29. Notwithstanding the above, if there is any deficiency found or violation committed qua any enactment, statutory rule or regulation, the sanction granted by this Tribunal will not come in way of action being taken, albeit, in accordance with law, against the persons concerned, directors and officials of the applicant.

30. While approving the Reduction of share capital as above, it is clarified that this order should not be construed as an order in any way granting exemption from payment of stamp duty, taxes or any other charges, if any payment is due or required in accordance with

law or in respect to any permission/ compliance with any other requirement which may be specifically required under any law. Further all compliances as are required to be done by the Applicant Company upon this order confirming reduction of share capital and security premium reserve shall be duly complied with in relation SEBI, FEMA and Income Tax laws as may be applicable.

31. This Application stands **allowed** accordingly.

Sd-

VENKATARAMAN SUBRAMANIAM
MEMBER (TECHNICAL)

Sd-

SANJIV JAIN
MEMBER (JUDICIAL)

SriramAnanth.V