

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

CP / 6 (MB) 2024

In the matter of petition under Section 66 read with Section 52 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 Shantiniketan Properties Private Limited

Shantiniketan Properties Private Limited)

CIN: U70101MH2005PTC281235)

A private limited company incorporated under)

the Companies Act, 1956, having its registered)

office at F-83, Profit Centre, Gate No 1)

Mahavir Ngr, Nr Pizza Hut, Kandivali (W))

Mumbai – 400076, Maharashtra, India)

... Petitioner Company

Order Dated: 07.06.2024

Coram:

Hon'ble Shri Sanjiv Dutt
Member (Technical)

Hon'ble Ms. Reeta Kohli
Member (Judicial)

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.
2. The Learned Counsel for the Petitioner Company submits that the Petitioner Company is authorised to undertake reduction of share capital under Article 40 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 to set off the accumulated losses i.e., the debit balance in the profit & loss account of Rs. 1,55,66,69,944/- (Rupees One Hundred and Fifty Five Crore Sixty Six Lakh Sixty Nine Thousand Nine Hundred and Forty Four only) as per the management certified unaudited financial statements as on June 30, 2023 appearing in the debit balance under "Accumulated deficit" as part of the "Other Equity" (i) by way of utilization of Rs. 1,26,89,39,750/-

(Rupees One Hundred and Twenty Six Crore Eighty Nine Lakh Thirty Nine Thousand Seven Hundred and Fifty Only) available balance in the securities premium account; and (ii) reduction in equity share capital from Rs. 1,43,86,50,970/- (Rupees One Hundred and Forty Three Crore Eighty Six Lakh Fifty Thousand Nine Hundred and Seventy Only) consisting of 14,38,65,097 (Fourteen Crore Thirty Eight Lakh Sixty Five Thousand and Ninety Seven) equity shares of Rs. 10/- (Rupees Ten Only) each fully paid to Rs. 1,15,09,20,776/- (Rupees One Hundred and Fifteen Crore Nine Lakh Twenty Thousand Seven Hundred and Seventy Six Only) consisting of 14,38,65,097 (Fourteen Crore Thirty Eight Lakh Sixty Five Thousand and Ninety Seven) shares of Rs. 8/- (Rupees Eight Only) each fully paid, by reducing the face value of each share from Rs. 10/- (Rupees Ten Only) each to Rs. 8/- (Rupees Eight Only) each fully paid thereby reducing the equity share capital to the extent of Rs. 28,77,30,194/- (Rupees Twenty Eight Crore Seventy Seven Lakh Thirty Thousand One Hundred and Ninety Four Only) (hereinafter referred to as 'Reduction of Share Capital'). The said special resolution was unanimously approved by the equity shareholders of the Petitioner Company at its extraordinary general meeting held on November 6, 2023. Copy of the special resolution is annexed as 'Annexure P-6' from Page No. 240 to 242 of Volume II of the Company Petition.

3. Nature of Business:

The Petitioner Company is in the business of developing commercial real estate property in India and is primarily involved in the development and leasing of investment property in IT/ITeS Sector. The Petitioner

Company is developing a project in Sector 62, Noida, Uttar Pradesh. The main objects of the Petitioner Company as per Clause III (A) of the MOA of the Petitioner Company are:

- 1. To act as real estate developers, builders, colonizers, contractors, Town Planners in India and abroad and for that purpose to acquire, purchase, sell, own, develop, appropriate, construct or deal in any manner, for commercial and/or Non-commercial objectives land, properties, estates, buildings whether for commercial or for residential purposes, business centres, townships, industrial estates and complexes, hotels, resorts, cottages, depots, warehouses, shops, villas, condominiums, commercial complex, multi-storeyed flats and/or infrastructure facilities relating thereto and to equip the same or part thereof with all or any amenities or conveniences drainage facility, electric, telephonic, television installations and to deal with the same in any manner whatsoever and entering into contracts and arrangements of all kind with builders, tenants and others.*
- 2. To carry, the business of restaurants, food courts, hospitality, hotels, motels, inns, cafes, fast food outlets, chains, taverns, refreshment rooms, eating houses, canteens, caters, kitchen, boarding and lodging, rest houses, guest houses resorts, tea and coffee houses, soda fountains, beer house keepers, bars, clubs, club house, gym house, health clubs, natural cure centre, night clubs, cabarets, discotheque, pubs, opera live, banquets halls, dinning, apartment house keeper and provide all types of amenities, facilities, conveniences, refreshments, amusements, recreations, entertainment*

and gaming facilities at place(s) and to manufacture, process, handle or otherwise deal in all types, size, nature, dimension, uses and taste of foods and their products, groceries, diaries, bakeries, confectionary, poultry, live and dead stock, beverage) alcoholic and non-alcoholic, distilled and undistilled, wines, beer, liquor, spirit, aerated mineral and artificial waters, drinks, soft drinks, hot drinks, juices, ice creams, provisions, spices and other goods, materials, substances, consumables and preparations connected thereto and to own, design, built, develop, promote, run, operate, manage, undertake furnish, improve, remodel, renovate, recondition, lease, hire, let on hire, organize, acquire, takeover, merge, de-merge and restructure such business, take away or home delivery based service in India or elsewhere, whether as owners, co-owners, joint ventures, partnership, through subsidiary Companies, franchisee, franchisor or through sub-franchise and/or any other business model.”

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.
14,50,00,000 equity shares of Rupees 10/- each	1,45,00,00,000
2,50,00,000 preference shares of Rupees 10/- each	25,00,00,000
Total	1,70,00,00,000
Issued, Subscribed & Paid-Up Capital	
14,38,65,097 equity shares of Rupees 10/- each	1,43,86,50,970
Total	1,43,86,50,970

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 as under:-

- a) *The Petitioner Company has been incurring losses. As at June 30, 2023, the accumulated losses of the Petitioner Company stood at Rs. 1,55,66,69,944/- (Rupees One Hundred and Fifty Five Crore Sixty Six Lakh Sixty Nine Thousand Nine Hundred and Forty Four only). The accumulated losses are reflected as a debit balance under “Accumulated deficit” as a part of “Other Equity”.*
- b) *As against the accumulated losses, the balance sheet of the Petitioner Company reflects an amount of Rs. 1,37,76,00,000/- (Rupees One Hundred and Thirty Seven Crore and Seventy Six Lakh only) standing to the credit of securities premium account as part of the “Other Equity” as on June 30, 2023.*
- c) *The Petitioner Company is moving the Petition 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 to obtain sanction of this Hon'ble Tribunal for reduction of share*

capital of the Petitioner Company. The Petitioner Company is seeking to:

- i. Reduce its equity share capital from Rs. 1,43,86,50,970/- (Rupees One Hundred and Forty Three Crore Eighty Six Lakh Fifty Thousand Nine Hundred and Seventy only) consisting of 14,38,65,097 (Fourteen Crore Thirty Eight Lakh Sixty Five Thousand and Ninety Seven) equity shares of Rs 10/- (Rupees Ten only) each fully paid, to Rs. 1,15,09,20,776/- (Rupees One Hundred and Fifteen Crore Nine Lakh Twenty Thousand Seven Hundred and Seventy Six only) consisting of 14,38,65,097 (Fourteen Crore Thirty Eight Lakh Sixty Five Thousand and Ninety Seven) shares of Rs 8/- (Rupees Eight only) each fully paid, by reducing the face value of each share from Rs. 10/- (Rupees Ten only) each to Rs. 8/- (Rupees Eight only) each fully paid thereby reducing the equity share capital to the extent of Rs. 28,77,30,194/- (Twenty Eight Crore Seventy Seven Lakh Thirty Thousand One Hundred and Ninety Four only); and*
 - ii. Reduction of balance of Rs. 1,26,89,39,750/- (Rupees One Hundred and Twenty Six Crore Eighty Nine Lakh Thirty Nine Thousand Seven Hundred and Fifty Only) from the balance available in the securities premium account of the Petitioner Company (collectively, 'Capital Reduction')*
- d) This Capital Reduction shall be utilized by the Petitioner Company to set-off the entire accumulated losses of Rs 1,55,66,69,944/- (Rupees One Hundred and Fifty Five Crore*

Sixty Six Lakh Sixty Nine Thousand Nine Hundred and Forty Four only) as per the management certified unaudited financial statements for the period ended June 30, 2023.

- e) *The Petitioner Company believes that utilization of the securities premium account and 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.*
- f) *Utilization of the securities premium account and 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 read with Section 52 of the Act.*

6. Article 40 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 reproduced as under:

“40 The Company may, by special resolution, reduce in any manner and with, and subject to, any incident authorized 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 May 10, 2024 *inter alia* making the following observations which are reproduced hereunder to which the Petitioner has filed its responses by way of an Affidavit in rejoinder dated May 14, 2024 and served upon the Regional Director on May 14, 2024:-

Para No	Observations of the report of the Regional Director dated May 10, 2024	Response / Undertaking / Submission of the Petitioner Company
6	ROC, Mumbai in his Report No ROCP/JTA /Sec. 66/ 2022-23 /1086 dated 08.05.2024, <i>inter alia</i> mentioned that there is no complaint / prosecution / investigation pending against the company. Further the ROC, Mumbai has made observation in para no. 23 of his report and stated that,	<p><u>Response to observations in sub-paragraph (1) 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</p>

	<p>1) Interest of the creditors and minor shareholders / stakeholder should be protected.</p> <p>2) Hon'ble NCLT, Mumbai Bench may decide the matter on its merits.</p>	<p>the Petitioner Company. The rights and interests of the minor 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 (1) of paragraph (6) above stands fulfilled.</p> <p><u>Response to observations in paragraph sub-paragraph (2) 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>
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7(A)	Reduction of capital is allowed from Securities Premium u/s 52(1) of the Companies Act, 2013, if company fulfils the conditions u/s 66 of the Companies Act, 2013.	<u>Response to observations in sub-paragraph (A) of paragraph (7):</u> The Petitioner Company submits that proposed utilization of securities premium account amounts to reduction of capital of the Petitioner Company by virtue of the provisions of Sections 52 and 66 of the Act. As Section 52 of the Act expressly provides that provisions of the said Act relating to the reduction of share capital of a Company shall, except as provided in Section 52 apply even for adjustment of securities premium account as if it were the paid up share Capital of the Company. Utilization in the aforesaid circumstances as proposed would attract provisions of Sections 66 of the Act for which the Petitioner Company is required to seek approval of the shareholders by a special resolution in terms of Section 66 of the Act. The said
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		<p>special resolution was unanimously approved by the equity shareholders of the Petitioner Company in its Extraordinary General Meeting held on November 6, 2023. Further, the Petitioner Company has not accepted any deposits as defined in Section 2(31) of the Act read with the Companies (Acceptance of Deposits) Rules, 2014 from public and therefore, question of the Company being in any arrears in repayment of the deposits or interest thereon does not arise.</p> <p>Hence, the reduction fulfills the conditionalities provided in Section 66 of the Act.</p>
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7(B)	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><u>Response to observations in sub-paragraph (B) of paragraph (7):</u></p> <p>The Petitioner Company has made the following averment in the Petition:</p> <p><i>“29. It is clarified that the proposed reduction of share capital does not involve extinction / reduction of any liability in respect of unpaid capital and involves reduction of the paid-up equity share capital and balance in securities premium account which is lost or is unrepresented by available assets. The proposed reduction of share capital 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.”</i></p> <p>The reduction of capital does not call for sacrifice on the part of</p>
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		<p>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 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)	The tax implication if any arising out of the proposal for reduction is subject to final	<u>Response to observations in subparagraph (C) of paragraph (7):</u>

	<p>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 by the Company after giving effect to the proposed reduction. The decision of the Income Tax Authority is binding on the petitioner Company.</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 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(D)</p>	<p>It is observed that, the company has corporate body shareholders namely Brookfield India Real Estate Trust (The Holding Entity) holding 100% shares, but the Company has not filed Form BEN-2 declaring name of the Beneficial Owner of the shareholding as its shareholders on 06.11.2023 in compliance of section 90 of the CA, 2013, thus the</p>	<p><u>Response to observations in sub-paragraph (D) of paragraph (7):</u> 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>Petitioner Company shall undertake to comply with the requirements of Section 90 of the CA, 2013 and Companies (Significant Beneficial owners) Rules, 2018.</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 applicable where the share of the reporting company are held "by SEBI registered Investment Vehicles such as mutual funds, alternative investment funds, REIT's, infrastructure Investment Trust regulated by the SEBI."</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>
7(E)	<p>The petitioner Company is engaged in the business of Real Estate Business; therefore, petitioner company may be directed to place on</p>	<p><u>Response to observations in sub-paragraph (E) of paragraph (7):</u> The Petitioner Company is in the business of developing commercial real estate property in India and it is primarily involved</p>

	record prior approval of RERA.	in the development and leasing of investment property in IT/ITeS Sector. Therefore, it is not required to be registered with the Real Estate Regulatory Authority. Accordingly, no intimation or approval is required from the Real Estate Regulatory Authority.
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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 above. Further heard, Mr. Altap Shaikh, Authorised Representative of the Regional Director, MCA (WR) Mumbai, who is present at the time of final hearing.
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 placed 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 is directed 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.

ORDER

“The paid-up share capital of Shantiniketan Properties Private Limited is henceforth Rs. 1,15,09,20,776/- (Rupees One Hundred and Fifteen Crore Nine Lakh Twenty Thousand Seven Hundred and Seventy Six only) consisting of 14,38,65,097 (Fourteen Crore Thirty Eight Lakh Sixty Five Thousand and Ninety Seven) shares of Rs. 8/- (Rupees Eight only) each fully paid, reduced from Rs. 1,43,86,50,970/- (Rupees One Hundred and Forty Three Crore Eighty Six Lakh Fifty Thousand Nine Hundred and Seventy only) consisting of 14,38,65,097 (Fourteen Crore Thirty Eight Lakh Sixty Five Thousand and Ninety Seven) equity shares of Rs. 10/- (Rupees Ten only) each fully paid by reducing the face value of each share from Rs. 10/- (Rupees Ten only) each to Rs. 8/- (Rupee Eight \sf only) each fully paid up.

The securities premium account of Shantiniketan Properties Private Limited is henceforth Rs. 10,86,60,250/- (Rupees Ten Crore Eighty Six

Lakh Sixty Thousand Two Hundred and Fifty only) as reduced from Rs. 1,26,89,39,750/- (Rupees One Hundred and Twenty Six Crore Eighty Nine Lakh Thirty Nine Thousand Seven Hundred and Fifty only). At the date of the registration of this minute, 14,38,65,097 (Fourteen Crore Thirty Eight Lakh Sixty Five Thousand and Ninety Seven) equity shares of Rs. 8/- (Rupees Eight only) each are issued and outstanding and deemed to have been fully paid-up. ”

13. Ordered Accordingly. CP / 6 (MB)/ 2024 is allowed.

SD/-

Sanjiv Dutt

(Technical Member)

/Abhay/

SD/-

Reeta Kohli

(Judicial Member)