

**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**BENGALURU BENCH, BENGALURU**  
*(Through Physical Hearing/ VC Mode (Hybrid))*

**C.P No.57/BB/2023**

Under Section 66 read with Section 52  
of the Companies Act, 2013  
and the National Company Law Tribunal (Procedure  
For Reduction of share Capital of Company), Rules 2016

**IN THE MATTER OF:**

**M/s. Nexus Udaipur Retail Private Limited**

Unit No. 401 and 402, 4th Floor,  
Embassy Classic, No. 5, Vittal Mallya Rd,  
Shanthala Nagar, Ashok Nagar  
Bengaluru – 560 001

- Petitioner Company

**Order delivered on: 02<sup>nd</sup> May, 2024**

**CORAM:** 1. Hon'ble Shri K. Biswal, Member (Judicial)  
2. Hon'ble Shri Manoj Kumar Dubey, Member (Technical)

**PRESENT:**

For Petitioner : Shri R Inbaraju,  
For ROC/RD : Mrs. Anuparna Bordoloi

**ORDER**

**Per: Manoj Kumar Dubey, Member (Technical)**

1. This company petition has been filed by **M/s. Nexus Udaipur Retail Private Limited**, (hereinafter referred as Petitioner Company) under Section 66 read with Section 52 of the Companies Act, 2013 (hereinafter referred to as as "Act") and the National Company Law Tribunal (Procedure for Reduction of Share Capital of Company) Rules, 2016 seeking for the reduction of capital resolved on 30<sup>th</sup> March 2023 by the special resolution set out in paragraph 11 of the petition be confirmed so as to be binding on all shareholders and creditors of the Petitioner company.

2. The Petitioner Company was incorporated on 16<sup>th</sup> August, 2007, under the Companies Act, 2013 as a private limited company, limited by shares with the Registrar of Companies, Bengaluru in the name and style of 'Flicker Projects Private Limited' having CIN No. U45400KA2007PTC069087. Subsequently on 2<sup>nd</sup> August, 2022, the name of the Petitioner Company was changed from 'Flicker Projects Private Limited' to '**Nexus Udaipur Retail Private Limited**'. The registered office of the Petitioner Company is situated at Unit No. 401 and 402, 4th Floor, Embassy Classic, No 5, Vittal Mallya Rd, Shanthala Nagar, Ashok Nagar, Bangalore, Karnataka 560001.
3. A copy of Memorandum of Association and Articles of Association has been placed on record as Annexure 2 to the Petition. The main objects of the Petitioner Company inter alia are as under:
  - a) *'To carry on the business of building, constructing, developing, establishing, altering, acquiring, converting, improving, marinating, designing, erecting, equipping, dismantling, pulling down, turn to account, decorating, repairing, operating, maintaining, reconstructing, renovating, remodeling, rebuilding, managing, and/or otherwise commissioning, setting up and to undertake turkey project of information technology park, knowledge park, industrial park, commercial complex, business centre, special economic zone for multi products and/or specific sectors including free trade zone and warehousing, container freight station and related facilities including office, commercial and residential complex, and to develop, create, provide, make, built, operate, rentals or through other arrangements, all kinds of necessary infrastructure required for the same.*
4. It is stated that Article No. 55 of Part-A of Articles of Association empowers the Petitioner Company to reduce its Capital. The extracts of the said Article is given hereunder:

*"55. 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".*
5. The Petitioner Company has made the following prayers:
  - a. *That the reduction of share capital resolved on March 30, 2023 by special resolution set out in paragraph 11 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, the 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 Kannada Prabha (Kannada 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 reduction of the share capital 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.*
6. The Present authorised, issued and paid-up Share Capital of the Petitioner Company as on 31.03.2022, is as follows;

<b>Authorized Capital</b>	<b>Amount (INR)</b>
5,00,00,000 equity shares of INR.10/- each	50,00,00,000
<b>Issued, Subscribed and Paid-Up Capital</b>	<b>Amount (INR)</b>
3,84,07,586 equity shares of INR.10/- each fully paid up	38,40,75,860

7. It is submitted that Board of Directors of the Petitioner Company in their meeting held on March 29,2023 and pursuant to the provisions of Section 66 read with Section 52 of the Act have resolved to utilize Rs.27,13,64,850/- (Rupees Twenty Seven Crores Thirteen Lacs Sixty Four Thousand Eight Hundred and Fifty Only) out of the balance available in the securities premium account of the Petitioner Company to set off the entire accumulated losses (i.e., debit balance of profit and loss account) of Rs 27,13,64,850 (Rupees Twenty Seven Crores Thirteen Lacs Sixty Four Thousand Eight Hundred and Fifty Only) as per the unaudited financial statement as at January 31, 2023 reflected as debit balance under "Reserves and Surplus - Retained Earnings" as part of the "Other Equity".

8. It is submitted that there is 1 (one) Secured and 10 (Seven) Unsecured Creditors in the Petitioner Company as on 29<sup>th</sup> March, 2023. The Certificate confirming list of Secured Creditor and Unsecured Creditors certified by 2 Directors of the Company and the Certificate by the Auditor confirming the correctness of the list of the Secured and Unsecured Creditors as per the records are furnished as Annexure-12 of the Petition.
9. It is submitted that the Petitioner Company has not obtained any deposit as defined under Section 73 of the Act read with the rules thereunder and therefore, the requirement under Rule 2(2)(c) of the Companies (Acceptance of Deposits) Rules, 2014 is not applicable to the Petitioner Company. The affidavit cum declaration by the authorised signatory of the Petitioner Company and a declaration by a Director in relation to deposits along with a certificate from the statutory auditors of the Petitioner Company certifying the same is attached as Annexure-13 to the Petition.
10. The proposed reduction of share capital involves setting off the accumulated losses of the Petitioner Company. The creditors of the Petitioner Company are also in no way affected by the proposed reduction of the share capital as there is no reduction in the amount payable to any of the creditors, no compromise or arrangement is contemplated with the creditors and there is no reduction in the security, if any, which the creditors may have in the Petitioner Company. Further, the proposed reduction of share capital would not in any way adversely affect the ordinary operations of the Petitioner Company or the ability of the Petitioner Company to honour its commitments or to pay its debts in the ordinary course of its business.
11. Pursuant to the Board Meeting dated 29<sup>th</sup> March, 2023, the Extraordinary General Meeting was held on 30<sup>th</sup> March 2023, wherein, the Authorised Representatives of two corporate Equity Shareholders of the Petitioner Company vide Special Resolution, have unanimously approved the proposed reduction, which inter alia reads as follows;

**“RESOLVED THAT** pursuant to the provisions of Section 66 and Section 52 and all other applicable provisions, if any, of the Companies Act, 2013 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 55 of Part A of the Articles of Association of the Company and subject to confirmation / sanction of the Hon'ble National Company Law Tribunal, Bengaluru Bench 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 to the utilize Rs.27,13,64,850 (Rupees Twenty Seven Crores Thirteen Lacs Sixty Four Thousand Eight-Hundred and Fifty Only) out of the balance available in securities premium account for setting off the entire accumulated losses ie. the debit balance in the Profit & Loss Account of Rs.27,13,64,850 (Rupees Twenty-Seven Crores Thirteen Lacs Sixty-Four Thousand Eight Hundred and Fifty Only) as per the management certified unaudited balance sheet of the Company as on January 31, 2023 appearing in “Reserves and Surplus — Retained Earnings as part of the ‘Other Equity” (hereinafter referred to as ‘Capital Reduction’).

**RESOLVED FURTHER THAT** pursuant to the Capital Reduction all the pre-reduction shareholders will remain as the shareholders of the Company and there will be no change in their shareholdings.

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

<b>Sl No.</b>	<b>Shareholder's funds</b>	<b>Balance as on January 31, 2023 (Amount in Rs)</b>	<b>Proposed Utilization (Amount in Rs)</b>	<b>Balance Post Capital Reduction (Amount in Rs)</b>
1	Paid-up capital	38,40,75,860	-	38,40,75,860
2	Securities Premium Account	1,12,43,10,000	27,13,64,850	85,29,45,150

**RESOLVED FURTHER THAT** any Director of the Company or Mr Pankaj Nandawat, Company Secretary (ICSI Membership No. A25686), Mr. Adarsh Padmanabhan or Ms. Roopa Patwardhan or Ms Soumya Satyanarayan, 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 too 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.*

12.A certificate has been issued by M/s. Deloitte Haskins & Sells, Statutory Auditors of the Petitioner Company that the reduction of the share capital contained under Paragraph 20(i) and (ii) of the petition is in compliance with the Indian Accounting Standards specified under Section 133 of the Act and the same is attached as Annexure-14 to the Petition.

13.It is respectfully submitted that there is no pending inspection, inquiry or investigation against the Petitioner Company under the Companies Act, 1956 or Companies Act, 2013.

14.When the C.P was listed on 9<sup>th</sup> June 2023, following order was passed:

1. *Heard the learned Counsel for the Petitioner.*
2. *Issue Notice to the ROC, Karnataka, Regional Director (SER), Hyderabad, Reserve Bank of India and to the Creditors of the Petitioner Company. Registry is directed to prepare the notice and Ld. Counsel for the Petitioner is permitted to collect the notice and serve it on the aforesaid Statutory Authorities and Creditors of the Petitioner along with a copy of the Petition and other material documents through e-mail as well as by Speed Post and to file an Affidavit of Service along with tracking reports in the Registry within two weeks. Upon receipt of notice, Respondents are directed to file its report/reply within four weeks, and thereafter the Petitioner is granted one week to file its response thereto, after duly serving the copy on other side. Petitioner is also permitted to cause paper publication in 'Business Standard', English daily and translation thereof in 'Kannada Prabha', Kannada daily, in Bangalore Editions and file proof of publication well before the next date of hearing. List the case on **12.09.2023**.*

15.In compliance to the said order, the Petitioner Company has filed Compliance Affidavit vide Diary No. 3404 dated 27<sup>th</sup> June 2023. Along with the Affidavit, the Petitioner Company has also attached the postal receipts of notices sent to the Regional Director, Hyderabad, Registrar of Companies, Bengaluru and Unsecured Creditors of the Company and the copies of paper publications of the advertisement made for the proposed reduction.

16.The Registrar of Companies, Karnataka, Bengaluru and the Regional Director, South Eastern Region, Hyderabad have filed a Common Report

vide Diary No. 3835 dated 21<sup>st</sup> July, 2023 by *inter alia* observing as under:

1. Para 2: That as per Extraordinary General Meeting of the Shareholders, held on 30.03.2023 special resolution was passed to utilize Rs.27,13,64,850/-out of the balance available in securities premium account for setting off the entire accumulated losses i.e., the debit balance in the Profit and Loss Account of Rs. 27,13,64,850/- as per the unaudited balance sheet of the Company as on 31.01.2023 appearing in "Reserves and Surplus Retained - Earnings" as part of the "Other Equity".
2. Para 3: As per Para 17 of the Petition, the form of the minute proposed to be registered under Section 66(5) of the Act is as follows:

*“The securities premium account of Nexus Udaipur Retail Private Limited is henceforth Rs.85,29,45,150/- (Rupees Eighty-Five Crores Twenty-Nine Lacs Forty Five Thousand One Hundred and Fifty Only) as reduced from Rs.1,12,43,10,000/- (Rupees One Hundred and Twelve Crores Forty-Three Lacs Ten Thousand Only). At the date of the registration of this minute, 3,84,07,586 (Three Crores Eighty-Four Lakhs Seven Thousand Five Hundred and Eighty-Six) equity shares of Rs. 10/- each are issued and outstanding and deemed to have been fully paid-up.”*
3. Para 4: The Petitioner company has submitted a certificate from M/s. Deloitte Haskins & Sells, Chartered Accountants LLP dated 03.04.2022 confirming there is one secured creditor of Rs. 101,73,00,000/- and there are 10 Unsecured creditors of Rs.51,63,820/- outstanding as on 29.03.2023. However, notice is served to creditors.
4. Para 5: As per certificate from M/s. Deloitte Haskins & Sells, Chartered Accountants LLP dated 03.04.2023, there is a secured loan outstanding from Union Bank of India (Loan A/C — 49506390002569) of Rs.101,73,00,000/-. Whereas, as per MCA Master Data details. The charge was satisfied on 02.06.2023, the company does not have any open charge.

5. Para 6: That the Petitioner Company has submitted certificate from M/s. Deloitte Haskins & Sells, Chartered Accountants LLP dated 03.04.2023 confirming that the company has not accepted any deposits and there are no arrears in repayment of deposits or interests outstanding as on 29.03.2023.
  6. That the Petitioner Company has submitted certificate from M/s. Deloitte Haskins & Sells, Chartered Accountants LLP dated 03.04.2023 that accounting treatment is as specified under section 133 of the Companies Act, 2013 and is in conformity with generally accepted accounting principles and other provisions of the Act.
  7. No prosecution, complaint, inquiry and inspection is pending with this office.
  8. The Hon'ble Tribunal may be pleased to take the above affidavit on record and pass such orders as may deem fit and proper in the interest of justice and equity on merits.
- 17.The Petitioner Company in response to the common report of RD and ROC has filed a reply affidavit vide Diary No.6202 dated 11.12.2023 has inter alia stated as under:
- i. As regards the observation in Para 1, 2, 3, 4, 5, 6, 7 & 8 of the Report: It is submitted that the said observations are correct and not required to be traversed.
- 18.The Petitioner Company has filed a Memo vide Dy. No.515 dated 24.01.2024 stating that from the date of serving of notice to respective creditors till the date of filing the affidavit, neither the Petitioner Company nor the Authorised Signatory has received any objection from any of the Creditors and statutory authorities.
- 19.Heard Shri. R. Inbaraju, Learned Counsel for the Petitioner and Mrs. Anuparna Bordoloi, Learned Counsel for ROC & RD. We have carefully perused the pleadings of the parties and extant provisions of the Companies Act 2013 and Rules made thereunder.

20. On 15.02.2024, during the course of hearing, the Ld. Counsel for the ROC/RD submitted that there are no further observations to the reply filed by the Petitioner Company to the report of the RoC/RD report.

21. The Petitioner Company avails the option of reduction of paid-up share capital which is in consonance with Section 66 read with 52 of the Companies Act, 2013. Following are the provisions:

**“66. Reduction of Share capital**

*(1) Subject to confirmation by the Tribunal on an application by the company, a company limited by shares or limited by guarantee and having a share capital may, by a special resolution, reduce the share capital in any manner and in, particular, may—*

*(a) extinguish or reduce the liability on any of its shares in respect of the share capital not paid-up; or*

*(b) either with or without extinguishing or reducing liability on any of its shares,*

*(i) cancel any paid-up share capital which is lost or is unrepresented by available assets; or*

*(ii) pay off any paid-up share capital which is in excess of the wants of the company, alter its memorandum by reducing the amount of its share capital and of its shares accordingly:*

**Provided** that no such reduction shall be made if the company is in arrears in the repayment of any deposits accepted by it, either before or after the commencement of this Act, or the interest payable thereon.

**52. Application of Premiums Received on Issue of Shares**

*(1) Where a company issue shares at a premium, whether for cash or otherwise, a sum equal to the aggregate amount of the premium received on those shares shall be transferred to a "securities premium account" and the provisions of this Act relating to reduction of share capital of a company shall, except as provided in this section, apply as if the securities premium account were the paid-up share capital of the company.*

*(2) Notwithstanding anything contained in sub-section (1), the securities premium account may be applied by the company*

*(a) towards the issue of unissued shares of the company to the members of the company as fully paid bonus shares;*

*(b) in writing off the preliminary expenses of the company;*

*(c) in writing off the expenses of, or the commission paid or discount allowed on, any issue of shares or debentures of the company;*

*(d) in providing for the premium payable on the redemption of any redeemable preference shares or of any debentures of the company; or*

*(e) for the purchase of its own shares or other securities under section 68.*

*(3) The securities premium account may, notwithstanding anything contained in sub-sections (1) and (2), be applied by such class of companies, as may be prescribed and whose financial statement comply with the accounting standards prescribed for such class of companies under section 133,—*

*(a) in paying up unissued equity shares of the company to be issued to members of the company as fully paid bonus shares; or*

*(b) in writing off the expenses of or the commission paid or discount allowed on any issue of equity shares of the company; or*

*(c) for the purchase of its own shares or other securities under section 68.”*

22. The present position of law, while dealing with provisions of Section 66 is that if none of the shareholders are objecting for the proposed reduction, then after considering the merits of the case as also connected facts and circumstances such petition generally deserves to be admitted. Some of the case laws are discussed below:

- a) In the case of Elpro International Limited (Company Petition No. 288 of 2007) order dated 22.06.2007 reported in (2009) 149 CompCas646 (Bom), Hon'ble Bombay High Court has expressed that the question of reduction of share capital is the matter of domestic concern. Further observed that decision for reduction is based on commercial consideration undertaken by the businessmen who are in the best position to know of the necessities and interest of the company concerned, in the absence of serious allegations as regards the bonafides of the proposed scheme, the courts are of the view that no interference in such decisions is required. It has also been observed that considering the commercial aspect of the decision it is not permissible for the court to come to the conclusion that the exit opportunity offered is inequitable and unjust.
- b) Likewise, in the case of Reckitt Benckiser (India) Limited (Company Petition No. 206 of 2004) Order dated 31.05.2005 reported in (2005) SCC Online Del 674 after due consideration of the pre and post

reduction, admittedly selective one, it was held that if majority by a special resolution decides to reduce share capital of company, it has also right to decide as to how this reduction should be carried into effect.

It is further observed that while reducing the share capital, company can decide to extinguish some of its shares without dealing in the same manner as with all other shares of the same class. The company limited by shares is permitted to reduce the share capital in any manner; thereby a selective reduction is permissible within the framework of law. On the question of valuation as well, an observation was that valuation of shares is a technical matter, which requires considerable skill and experience. If the stakeholders are satisfied with the value, can approve the transaction of reduction of share capital which should not deem to be inequitable or unfair transaction

- c) In the decision of Precious Energy Limited vs. Regional Director in Company Appeal (AT) NO. 17/2021 passed by Hon'ble NCLAT wherein it is held that "It is seen from the record that the reduction of the Share Capital was approved by the Shareholders of the appellant Company unanimously by way of special resolution with the objective of reducing the overall weighted average cost of Capital and improving the earning per share. In Reckitt Benckiser (India) Limited (Supra), the Hon'ble Delhi High Court has upheld the view that "the domestic concern i.e., it is the decision of the majority which prevails. If majority by special reduction decides to reduce the share capital of the Company, which also has the right to decide as to how this reduction should be carried into effect....". In the instant case,

- d)

admittedly, the reduction of this Share capital was approved unanimously by the Shareholders by way of a special resolution.”

“It is seen from the record that the company has complied with all the statutory requirements as per the directions of the Tribunal and has also filed necessary affidavits to that effect. It is also pertinent to mention that none of the Creditors objected to the reduction of the capital. Section 66 (1) (b) of the Act enables a Company to reduce its share capital in any manner’ provided it is approved by the majority of Shareholders through a special resolution.”

- e) Further, in the matter of Economy Hotels India Services Private Limited vs. Registrar of Companies in Company Appeal (AT) No. 97 of 2020 passed by Hon’ble NCLAT, it was observed that “Be it noted, that ‘Reduction of Capital’ is a ‘Domestic Affair’ of a particular Company in which, ordinarily, a Tribunal will not interfere because of the reason that it is a ‘majority decision’ which prevails...’.

23.It is further noticed, as per the discussions above that the necessary compliance of the requirements of Section 66 (1) along with proviso; Section 66 (2) and Section 66 (3) proviso has been made/satisfied by the Petitioner Company. In the circumstances, it is hereby ordered to confirm the reduction of share capital of the Petitioner Company under Section 66 read with Section 52 of the Companies Act, 2013; by approving the Minutes of EGM dated 30<sup>th</sup> March 2023 wherein the members of the Petitioner Company resolved for utilizing Rs.27,13,64,850/- (Rupees Twenty Seven Crores Thirteen Lacs Sixty Four Thousand Eight Hundred and Fifty Only) out of the balance available in securities premium account for setting off the entire accumulated losses i.e., the debit balance in the Profit & Loss Account of Rs.27,13,64,850 (Rupees Twenty Seven Crores Thirteen Lacs Sixty Four Thousand Eight Hundred and Fifty Only); as per the management certified unaudited balance sheet of the Company as on January 31, 2023 which is appearing in “Reserves and Surplus - Retained Earnings” as part of the “Other Equity”.

24.In terms of the above, the necessary alteration shall be made in the Memorandum of Association by the Petitioner Company for reduction of

the paid-up share capital. The copy of the altered Memorandum of Association and the minutes approved along with the order shall be delivered to the ROC by filing the e-Form INC, within 30 days of the receipt of the copy of the order. Accordingly, the Registry shall prepare an order in form No.RSA-6 as per National Company Law Tribunal (Procedure for Reduction of share capital of the company) Rules, 2016 and issue to the Applicants/Petitioner Company. The Petitioner Company shall publish this order of confirmation in "Business Standard", English daily, Bengaluru edition and "Kannada Prabha" Kannada daily, Bengaluru edition, expeditiously and not later than 30 days from the receipts of copy of the order, as required under Section 66(4) of the companies Act, 2013.

25. Ordered Accordingly. To be consigned to the Record.

**Form of the Minutes**

*The securities premium account of Nexus Udaipur Retail Private Limited is henceforth Rs.85,29,45,150/- (Rupees Eighty-Five Crores Twenty-Nine Lacs Forty-Five Thousand One Hundred and Fifty Only) as reduced from Rs.1,12,43,10,000/- (Rupees One Hundred and Twelve Crores Forty-Three Lacs Ten Thousand Only). At the date of the registration of this minute, 3,84,07,586 (Three Crore Eighty-Four Lakhs Seven Thousand Five Hundred and Eighty-Six) equity shares of Rs. 10/- each are issued and outstanding and deemed to have been fully paid-up."*

**Sd/-**

**MANOJ KUMAR DUBEY)  
MEMBER (TECHNICAL)**

**Sd/-**

**K.BISWAL  
MEMBER (JUDICIAL)**