

IN THE NATIONAL COMPANY LAW TRIBUNAL

MUMBAI BENCH, COURT - II

Company Petition No. 250/ 2023

In the matter of Section 66 read with Section 52 of the Companies Act, 2013 and the Rules framed thereunder

AND

In the matter of Reduction and Equity Share Capital of Mahindra Homes Private Limited

Mahindra Homes Private Limited,

CIN: U70102MH2010PTC203618, a company incorporated under the Companies Act, 1956 having its registered office at: - 5th Floor, Mahindra Tower Worli, Mumbai – 400018.

..... Petitioner-Company

Order Delivered on :- 24.07.2024

Coram:

Mr. Anil Raj Chellan

Mr. Kuldip Kumar Kareer

Member (Technical)

Member (Judicial)

Appearances:

For the Applicant : Mr. Hemant Sethi a/w Tanya Sethi

ORDER

Per: - Coram

1. Petition fixed for hearing on 30th October, 2024.
2. This Company-Petition has been filed for confirmation of a Special Resolution passed by the Equity Shareholders of the Petitioner-Company for reduction of the issued, subscribed and paid-up Equity Share Capital of the Company from Rs. 86,85,930/- (Rupees Eighty-Six Lakh Eighty-Five Thousand Nine Hundred Thirty Only) divided into 8,22,507 Series A equity shares of Rs. 10/- each, 23,043 Series B equity shares of Rs. 10/- each and 23,043 Series C equity shares of Rs. 10/- each to Rs. 84,45,930/- (Rupees Eighty-Four Lakh Forty-Five Thousand Nine Hundred Thirty Only) divided into 8,22,507 Series A equity shares of Rs. 10/- each, 11,043 Series B equity shares of Rs. 10/-

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each and 11,043 Series C equity shares of Rs. 10/- each fully paid up, by canceling and extinguishing Series B and Series C paid-up equity share capital as follows:

<i>Particulars</i>	<i>Series B Equity Shares (Held by Actis)</i>	<i>Series C Equity Shares (held by MLDL)</i>	<i>Total</i>
<i>Existing No. of shares held (A)</i>	23,043	23,043	46,086
<i>No. of shares to be reduced through cancellation and extinguishment (B)</i>	12,000	12,000	24,000
<i>Face value per share (fully paid) (INR)(i)</i>	10	10	-
<i>Price per share to be paid in excess of paid-up share capital as per valuation report issued by Registered Valuers, M/s. Nishant Soni & Associates (INR) (ii)</i>	49,990	49,990	-
<i>Per Share – Excess i.e. premium per share amount to be paid which will be adjusted against the Securities Premium account (INR) (iii) = (ii)-(i)</i>	49,980	49,980	-
<i>No. of shares post reduction of Capital (C) = (A) – (B)</i>	11,043	11,043	22,086

3. This Tribunal vide its order dated 04.12.2023 directed the Petitioner Company to serve notices in Form No. RSC-2 of the hearing of the

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petition along with a copy of the petition upon (i) the concerned Registrar of Companies, (ii) Central Government through the concerned Regional Director, and (iii) the Reserve Bank of India and with a direction that they may submit their representations to the Tribunal, if any, within a period of 3 months from the date of receipt of such notice.

Pursuant to the said notice Regional Director (Western Region), The Ministry of Corporate Affairs, Mumbai, filed a report dated 20th March 2024, making observations, inter alia, as follows:

- a) The Company and its Auditors have attached a list of the following creditors as on 31.08.2023.

1	Secured Creditors	Amount (in RS.)
a	HDFC Bank Limited	28,79,52,066/-
b	Axis Bank Limited	39,09,03,306/-
2	Unsecured Creditors	43,46,77,075/-

- b) The Petitioner company has sent notices to the above creditors and attached the proof with the Petition. However, the company has Trade payable of Rs. 1,699.56 Lakhs, Advance from customers of Rs. 21,383.96 Lakhs, and Statutory dues payables of Rs. 58.15 Lakhs. The list of above 214 creditors does not clarify as to whether notices to these creditors have been sent

pursuant to the requirement of Rule 3 (iii) of NCLT (Procedure for Reduction of Share capital) Rules, 2016. Thus, the company may furnish complete list of said creditors i.e. Trade payables, Advance from Customers, and Statutory Dues Payables as on 31.08.2023.

4. The Counsel for the Petitioner Company submits that all pending amounts including Trade Payables irrespective of whether they are pending as on 31.08.2023 are reflected in the list of Creditors as on 31.08.2023 and confirmed by the Statutory Auditor's certificate and attached in the application as they are the Creditors. Further, Rule 2(2)(a) of the National Company Law Tribunal (Procedure for Reduction of Share Capital of Company) Rules, 2016 states that the list of creditors is to be prepared as on date not earlier than 15 days prior to the date of filing of an application. In compliance with the aforesaid rule, the Company Petition was accordingly filed on 13.09.2023 and notices to all creditors i.e., Secured and Unsecured were served by the Petitioner Company in compliance with Rule 3(iii) of NCLT (Procedure for Reduction of Share Capital) Rules, 2016 seeking their comments and in case they do not revert, then it is deemed that they have granted their approval to the proposed reduction. So far as advance from customers are concerned, the Petitioner Company submits that the total amount

was of Rs. 21,383.96 Lakh and is shown under current liabilities, pursuant to the IND AS requirements, it is revenue of the Petitioner Company and is treated as income due to the requirement of IND AS, it is shown as Advance from 'Customers'. The Petitioner Company confirms that there have been no default/dispute in this regard till date with any of the home buyer. Further, out of the aforesaid Rs. 21,383.96 Lakhs, the amount will be settled as income wherever applicable as the possession of the homes/property is taken by the home buyer. The Petitioner Company confirms that there have been no defaults/disputes in this regard till date with any of the home buyer. As regards to statutory dues payable of Rs. 58.15 Lakhs, it is submitted that the Petitioner Company has already paid as on date and they are not part of trade relating creditors.

5. We have considered the submissions of the Counsel appearing for the Petitioner Company and representative of RD. We also perused the Financial Statements of the Company for the financial year ended on 31.03.2023 and the unaudited financial statement of the Petitioner Company as on 31.08.2023.
6. It is an admitted fact that the Petitioner Company has received as advance from the customers/home buyers of Rs. 21,383.96 Lakhs and

the delivery of possession in respect of those flats/property has not been made yet. The Petitioner Company submitted that there have been no defaults/disputes in this regard till date with any of the home buyers and this amount will be settled as income as and when the possession of the home/property is taken by the home buyers. The Petitioner Company further clarified that currently there are no projects pending in Bengaluru. As regards projects in NCR they are in continuation as per the RERA timelines. However, pre and post-capital reduction shareholding pattern of promoters remains the same, and the relevant applicable provisions of RERA are state-specific exemption to transactions where there is no change in promoter and are only applicable in schemes of merger and demerger under Section 230-232 where there is change in promoter/holding pattern. Whereas this case, of capital reduction under Section 66 of the Companies Act, 2013, is not covered under the provisions of RERA and the notices to RERA for Capital Reduction are not applicable.

7. We have weighed the above submissions. It is noticed that the Circular No. 11/2017 dated 08.11.2017 annexed with the reply affidavit is with respect to amalgamation or merger or demerger of the companies under Sections 230-232 of the Companies Act, 2013. However, since this

Company Petition is pertaining to reduction of share capital, the circular dated 08.11.2017 produced by the Petitioner Company is not at all applicable.

8. As regards, the issue of notice to the RERA and the home buyers, the question arising for reconsideration is whether they would be treated as creditors for the purpose of Section 66 of the Companies Act, 2013. Section 66 of the Companies Act directs that notice to all creditors of the Company to be given and the representations, if any, made by them ought to be taken into consideration. Further, no such reduction shall be made, if the Company is in arrears in repayment of any deposits accepted by it or the interest payable thereon. It is pertinent to observe that as per the IND AS 115 - Revenue from Contracts with Customers, the advances made by the customers/home buyers ought to be treated as loans and the home buyers are to be treated as creditors till such time the home/property are completed and handed over to the customers. The financial statement submitted by the Petitioner Company clearly shows that there is a liability of Rs. 21,383.96 Lakhs towards the home buyers. The Insolvency and Bankruptcy Code, 2016 also recognizes home buyer as a Financial Creditor.

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9. In the above circumstances, we are of the considered view that the home buyers who have given advance towards purchase of home/property from the Petitioner Company and have not taken possession of the constructed flat/property ought to be treated as creditors of the Petitioner Company.
10. We, therefore, direct the Petitioner Company to serve notice in form No. RSC-2 of the hearing of the Petition along with copy of the Petition upon RERA Authority and RSC-3 of the hearing of the Petition along with copy of the Petition upon to all the home buyers.

Sd/-

**ANIL RAJ CHELLAN
(MEMBER TECHNICAL)**

Sd/-

**KULDIP KUMAR KAREER
(MEMBER JUDICIAL)**