
(2022) 05 NCLT CK 0029
In the National Company Law Tribunal
Case No : CP No. 67/Chd/Chd/2019
Escorts Finance Limited Vs

Date of Decision : 12-05-2022

Acts Referred:

Companies Act, 2013 — Section 55(3)
National Company Law Tribunal Rules, 2016 — Rule 69

Citation : (2022) 05 NCLT CK 0029

Hon'ble Judges : Harnam Singh Thakur, Member (J); Subrata Kumar Dash, Member (T)

Bench : Division Bench

Advocate : Vaibhav Sharma

Final Decision : Disposed Of

Judgement

Harnam Singh Thakur, Member (Judicial)

1. The petitioner company Escorts Finance Ltd. (hereinafter called as the "Company") has filed the present application under Section 55(3) of the Companies Act, 2013 praying for grant of following relief:

"to issue further 95,00,000 1% Cumulative Redeemable Preference Shares for a period of 20 years in lieu of the 95,00,000 CRPS previously issued by the petitioner"

2. It is stated the petitioner company was incorporated on 9th February, 1987 under the Companies Act, 1956. The present petition is filed through Mr. Vicky Chauhan, Authorized Signatory of the Petitioner company, having been duly authorized vide Board Resolution Dated 27.03.2019. Copy of Board Resolution is annexed as Annexure P-1. The registered office of the company is situated at SCO 64-65, 3rd Floor, Sector 17-A, Chandigarh, 160017.

3. It is contended that the Authorized Share Capital of the Company is Rs.50,00,00,000/- (Rupees Fifty Crores Only) divided into 40,500,000 Equity Shares of Rs.10/- each. The Subscribed and paid-up share capital of the Company is Rs.40,17,25,000/- divided into 40,250,000 Equity Shares of Rs.10/-

each, less the allotment money in arrears from others. The Preference share capital is Rs.9,50,00,000/- divided into 95,00,000 10% Cumulative Redeemable Preference Shares of Rs.10/- each.

4. It is submitted that the Company had issued 95,00,000 10% Cumulative Redeemable Preference Shares ("CRPS") of value Rs.10/- each forming part of the authorized share capital of the Company, on March 31, 1999 to M/s Escorts Limited, the holding company of the Petitioner ("Preference Shareholder"), on private placement basis.

5. It is further submitted that the CRPS were available for redemption at the expiry of 5 years from the date of allotment. However, in order to strengthen the capital adequacy of the Company and on account of unfavourable position of the Company, the period of redemption of the said preference shares was extended upto March 30, 2019 from time to time.

6. It is averred that Company is grappling with severe financial distress. The accumulated losses of the Petitioner Company in the past five financial years have been depicted below:

Sr.

No.

Financial Year (FY)

Loss incurred (in crores)

1

FY ending 31st March 2018

218.3515

2

FY ending 31st March 2017

219.0288

3

FY ending 31st March 2016

217.3187

4

FY ending 31st March 2015

217.6829

5

FY ending 31st March 2014

7. It is contended that due to the mounting losses and the liquidity crunch faced by the Company, the interest on the CRPS, accrued to the Preference Shareholder amounting to Rs. 18.05 Crores, for the year ending 31st March 2018, has been duly waived by the Preference Shareholder. Further, the interest on the CRPS which has accrued subsequent to 31st March 2018, amounting to Rs. 95,00,000/- has also been proposed to be waived by the Preference Shareholder. The Petitioner is presently under no liability to pay any dividends to the Preference Shareholder.

8. It may be noted that the present financial condition of the company is quite severe and company is no position to redeem the CRPS issued by it. In support of this, the petitioner has enclosed audited financial statements for the financial years ending 31.03.2018, 31.03.2017, 31.03.2016, 31.03.2015 and 31.03.2014 and unaudited financial result for the quarter ending 2018.

9. It is further clarified that earlier the company had issued 95,00,000 10% Cumulative Redeemable Preference Shares ("CRPS") of value Rs.10/- each and the same attracted interest at the rate of 10%. The company has sought to issue further 95,00,000 1% Cumulative Redeemable Preference Shares of value Rs.10/- each, which results in reducing the interest rate i.e. 1% instead of 10%. The Preference Shareholder i.e. Escorts Limited has consented the same by resolution dated 22.03.2019 which is attached as Annexure P-5 of the petition.

10. In view of the above stated circumstances the petitioner company passed a special resolution on 27.03.2019 and has obtained unanimous consent of the holders of such preference shares, and subject to the approval of the regular, the PC can issue new redeemable preference share, and on the issue of such redeemable preference share the old redeemable preference share shall be deemed to have been redeemed. Copy of board resolution of PC approving the issuance of 95,00,000 1% Cumulative Redeemable Preference Shares is annexed as Annexure P-4.

11. It is submitted that Escorts Limited is the only preference shareholder, the requirement of obtaining consent from 3/4th of the Preference Shareholder is fulfilled through consent affidavits from Escort Limited. The Preference Shareholder has executed an affidavit of consent dated 28.03.2019 in favour of the petitioner, expressing their willingness to subscribe new/fresh 1% Cumulative Redeemable Preference Share in view of redemption of the existing CRPC. The said consent affidavit is annexed as Annexure P-5.

12. In support of the present application, the petitioner relied on the provision of Section 55(3) of the Companies Act, 2013 which provides as under:

"Where a company is not in a position to redeem any preference shares or to pay dividend, if any, on such shares in accordance with the terms of issue (such shares hereinafter referred to as unredeemed preference shares), it may, with

the consent of the holders of three-fourths in value of such preference shares and with the approval of the Tribunal on a petition made by it in this behalf, issue further redeemable preference shares equal to the amount due, including the dividend thereon, in respect of the unredeemed preference shares, and on the issue of such further redeemable preference shares, the unredeemed preference shares shall be deemed to have been redeemed:

Provided that the Tribunal shall, while giving approval under this sub-section, order the redemption forthwith of preference shares held by such persons who have not consented to the issue of further redeemable preference shares.

Explanation.—For the removal of doubts, it is hereby declared that the issue of further redeemable preference shares or the redemption of preference shares under this section shall not be deemed to be an increase or, as the case may be, a reduction, in the share capital of the company.”

13. An examination of the contents of the present application shows that it meets the criteria laid down in the above Section and the requirements of Rule 69 of NCLT Rules, 2016. Therefore, we are of the view that the present company petition deserves to be allowed under Section 55(3) of the Companies Act and approves the issuance at par value for consideration other than cash of 95,00,000 - 1% (One percent) CRPS with face value of INR 10 (Rupees Ten Only) each fully paid up, aggregating to INR 9,50,00,000 (Rupees Nine Crore and Fifty Lakh Only) redeemable at the expiry of 20 years from the date of allotment to Escorts Limited in lieu of the redemption of the unredeemed 95,00,000 – 10% (Ten Percent) CRPS with face value of INR 10 (Rupees Ten Only) each fully paid up aggregating up to a principal amount of INR 9,50,00,000 (Rupees Nine Crore and Fifty Lakh Only) held by Escorts Limited, due for redemption on March 30, 2019, on such terms and conditions as set out under the said Board resolution. There is no holder of Preference Shares who has not consented to issue further redeemable shares as there is unanimous consent of all holders.

14. In the light of above discussion, the present Company Petition is allowed and stands disposed of accordingly.