

NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH, MUMBAI

C.P No. 86/(MAH)/2016

CORAM: Present: SHRI B.S.V. PRAKASH KUMAR  
MEMBER (J)  
  
SHRI V. NALLASENAPATHY  
MEMBER (T)

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF MUMBAI BENCH OF THE  
NATIONAL COMPANY LAW TRIBUNAL ON 28.11.2017

NAME OF THE PARTIES: Mr. Pratik Vira & Ors.  
V/s.  
M/s. Sunshine Housing & Infrastructure Pvt. Ltd.

SECTION OF THE COMPANIES ACT: 397/398 of the Companies Act 1956  
and 241/242 of the Companies Act, 2013.

S. No.	NAME	DESIGNATION	SIGNATURE
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(1) Mr. P.N. Modi Sr. for Respondent 1  
Mr. Gqbal Chagla Sr. R-2, R-3  
Mr. kunal kataria R1  
Mr. Samir Malik R1, 2, 3  
Ms. Saumya Sharma R1, 2, 3

*[Signature]*

(1) a. 2. Narekwal for Respondent No.10  
i/b. Harini and Co.

*[Signature]*

(2) Sr. Adv. Mr. Fredun De'Vitre

Sr. Adv. Mr. Mustafa Doctor  
Sr. Adv. Mr. Gaurav Joshi  
a/w Ms. Kritida Chandarav,  
Ms. Nandini Chitral,  
Ms. Taruna Jaiswal and  
Ms. Dipannika Ghosh  
i/b. M. Humravnale for  
the Petitioners

For  
the  
PETITIONERS  
*[Signature]*

**ORDER**

**CP No. 86/241-244/NCLT/MB/MAH/2016**

On hearing the submissions of either side in respect to giving effect to the resolutions passed in the EoGM dated 16.11.2017, this Bench is of the view that since it is a real estate company and ongoing projects being presently regulated by new enactment RERA, unless projects are timely completed, the company will be put into inconvenience on many fronts. Whereby, to complete those ongoing projects, unless debt funds are released from the banks, it is difficult to complete projects in progress, therefore, for special resolution having already been passed for taking loan from the financial institutions, it is hereby made clear that company can exercise such borrowing right as approved in the resolution dated 16.11.2017.

The Petitioner's main argument is that in R1 Company's Balance Sheet, loans having been shown as given to outsiders without giving any further details of the same, this Bench is sought to look into giving loans to outsiders as unfair on the part of R1 company management. To which, the Respondents' side answers that since they are ongoing projects, R1 Company is required to provide project advances to various contractors linked to this project, for those contractors and other companies being outsiders to R1 Company, such advances would be shown as given to outsiders only. Since it is not the case of the petitioner that such advances are nothing but diversion of funds of the company for unlawful gain to the Respondents in management, just because the petitioner made an allegation that loans have been given to outsiders without giving any details, such allegation cannot be treated as management siphoning the funds of the company. Had the petitioner made specific allegation naming the persons to whom advances given

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without reason, then duty would cast upon to explain such allegation by the Respondents, but no such specific allegation against the Respondents.

As to 'Right Issue' allegation, as and when the company goes for Right Issue, if any of the parties have felt aggrieved of it, they are at liberty to approach this Bench.

In pursuance of the Order already passed, as the Respondents' side has been filing financials on fortnightly basis, for the petitioner side has sought for inspection of those financials filed before this Bench, there being consensus between the parties for providing such inspection to the Petitioner's side, this Bench hereby orders the Registry of NCLT to provide inspection of those financials to the Petitioners. For convenience sake, the order directing to file financials fortnightly is hereby modified to file monthly instead of filing fortnightly.

List this matter on 15.12.2017 as fixed earlier.

**Sd/-**

**V. NALLASENAPATHY**  
Member (Technical)

**Sd/-**

**B.S.V. PRAKASH KUMAR**  
Member (Judicial)