

(2007) 12 GUJ CK 0012
In the Gujarat High Court
Case No : Company Petition No. 186 of 2007
In Re: Alembic Ltd.

Date of Decision : 28-12-2007

Acts Referred:

Companies (Court) Rules, 1959 — Rule 48, 49, 50, 52, 53
Companies Act, 1956 — Section 100, 101, 102, 103, 103(1)

Citation : (2008) 144 CompCas 105 : (2009) 89 SCL 19

Hon'ble Judges : K.A. Puj, J

Bench : Single Bench

Advocate : Swati Soparkar, for the Appellant;

Judgement

K.A. Puj, J.—This is a petition filed under Sections 78 and 100 to 103 of the Companies Act, 1956, seeking confirmation to the proposal of capital reduction of the company in the form of utilizing its securities premium account as well as general reserve.

2. The petitioner-company herein is a listed public limited company and is engaged in the business of production and marketing of pharmaceutical products. The company generated a turnover of Rs. 721.83 crores during the financial year ending on March 31, 2007. It is a profit making company with substantial reserves. The company's growth efforts included acquisition of various intangible assets, such as trademarks, copyright, designs, technical know how, licenses, franchises, etc., aggregating to Rs. 176.83 crores. The management of the petitioner-company thought it appropriate to restructure the balance-sheet of the company so as to streamline its financial structure through elimination of intangible assets. The company has, therefore, proposed to adjust the debit balance of its intangible accounts against the credit balance of its share premium account and general reserve account under the provisions of the Companies Act. It is submitted that the restructuring will have no impact on the tangible net worth and tangible book value of the company's shares, while the apparent net worth and apparent book value will come down.

3. By a special resolution of the company, duly passed in accordance with Section

189 of the Companies Act, 1956, at a general meeting thereof, held after due notice as provided in the Act on August 30, 2007, it was resolved as follows:

Resolved that pursuant to the provisions of Section 78 read with Section 100 of the Companies Act, 1956 (hereinafter referred to as "the Act") and other applicable provisions, if any, of the Act, pursuant to article 59 of the articles of association of the company and subject to sanction of hon"ble High Court of Gujarat or National Company Law Tribunal and also subject to such other consents, approvals, permissions and sanctions as may be required, an amount not exceeding Rs. 29.17 crores out of the balance standing in the share premium account and an amount not exceeding Rs. 102.58 crores out of the standing in general reserve both aggregating to an amount not exceeding Rs. 131.75 crores be reduced by transfer to the credit of profit and loss account of the company for the year ending on March 31, 2008, to be utilized against debit to the profit and loss account for the year ending March 31, 2008, of an amount not exceeding Rs. 176.83 crores out of the balance in the following asset accounts, namely, trademarks, copyrights, business and commercial rights and other intangibles (hereinafter called "intangible assets"), after making due adjustment for deferred tax, which deferred tax adjustment will be reversed in the subsequent years by corresponding debit to the general reserve account.

Resolved further that the board of directors of the company (hereinafter called "the Board" which term shall be deemed to include any committee of Board constituted to exercise its powers including the power conferred by this resolution or any person which the Board may nominate/constitute to exercise its power, including the powers by this resolution) be and is hereby authorized:

1. to give effect to such modifications, changes, variations, alterations, deletions, additions as may be suggested by the hon"ble High Court of Gujarat and other authorities.
2. to settle any doubt, question or difficulty that may arise including but not limited to that with regard to computation, utilization or adjustment of share premium account, general reserves, intangible assets of deferred tax, including passing such accounting entries and/or making such other adjustments in the books of account as may be required.
3. to do all such other acts, deeds, matters and things as may be required to give effect to this resolution.
4. to delegate all or any of the powers herein conferred to any committee of directors or any other director or any other officer of the company.
4. The petition was admitted by this Court on November 30, 2007, and the same was ordered to be advertised in Vadodara edition of Indian Express, English daily and Loksatta-Jansatta, Gujarati daily. The said direction has been complied with by the company and the notice of the petition has been duly advertised in the aforesaid dailies on December 5, 2007. The same is confirmed by the affidavit

dated December 7, 2007, filed by the clerk of the learned advocate for the petitioner. Pursuant to the said advertisement no one has come forward to raise any objections opposing the sanction to the proposed capital reduction. It has also been pointed out that the proposed reduction of capital of the petitioner was approved by the Bombay Stock Exchange and National Stock Exchange respectively vide letters dated September 14, 2007 and September 19, 2007, as required under the listing agreement. These letters are produced on record of this petition along with additional affidavit dated December 25, 2007, filed by Shri Rajkumar Baheti, the director of the petitioner-company.

5. It is further pointed out in the petition that the proposed reduction does not involve diminution of any liability or repayment of paid up capital. In fact, no reduction is envisaged in the issued, subscribed or paid up share capital of the company. Since the share premium account forms the part of the capital in terms of Section 78 of the Companies Act, 1956, the utilization of the amount lying in this account also needs to be treated as reduction of capital. In view of this, while admitting the petition this Court granted dispensation of the procedure as required u/s 101(2) of the Act and under Rules 48 to 65 of the Companies (Court) Rules, 1959.

6. I have heard Mrs. Swati Soparkar, learned advocate for the petitioner. Having perused the petition and more particularly the reasons given in support of the proposed reduction in my view there is no reason not to confirm the proposed action of the petitioner to reduce its capital. The said proposal does not prejudicially affect any one as it does not involve extinguishment or diminution of the capital of the company nor does it involve pay off of any capital received by the company. Accordingly, the resolution dated August 30, 2007, is hereby confirmed.

7. The form of the minute proposed to be registered u/s 103(1)(b) is as follows:

Minute u/s 103(1):

The share premium account and general reserve account of Alembic Ltd. is by virtue of a special resolution of the company dated August 30, 2007 and by virtue of the sanction granted by the High Court of Gujarat on December 28, 2007, reduced from Rs. 69.74 crores to Rs. 40.57 crores and Rs. 245.30 crores to Rs. 142.72 crores respectively.

8. Thus, the prayers made in terms of para. 17(A) to (C) are hereby granted.

9. The petitioner is directed to publish the notice of confirmation of reduction of capital and approving of minutes in the Vadodara edition of Indian Express, English daily and Loksatta-Jansatta, Gujarati daily, within 14 days of the registration of the order with the Registrar of Companies.

The petition is accordingly disposed of with no order as to costs.