(2004) 04 DEL CK 0119

In the Delhi High Court

Case No : Co. Petition No. 7 of 2004

In Re: Allianz Capital and Management Services Ltd.

Date of Decision : 08-04-2004

Acts Referred:
Companies Act, 1956 — Section 100, 101, 102, 103(1)

Citation : (2004) 112 DLT 904 : (2005) 63 SCL 496

Hon'ble Judges : Surinder Kumar Aggarwal, J

Bench : Single Bench

Advocate : P.K. Batta, Dy. ROC in perso P.K. Mittal, for the Appellant;

Judgement

S.K. Agarwal, J.—By this petition under Sections 100, 101 and 102 of Companies Act, 1956, the petitioner M/s. Allianz Capital and Management Services Ltd. seeks approval of the Minutes to Transfer of Capital Reserves to Profit and Loss Account asset out in para 12 of petition. Special Resolution passed in the extra ordinary general meeting of petitioner company held on 29.11.2003. First the Articles of Association of the Company were altered and Sub-clause49-A was added authorizing the company to reduce its Share Capital. In the other Special Resolution passed on the same day the balance in Share Premium Account amounting to Rs. 686.92 lacs and debentures forfeited Account to the tune of Rs. 146.56 lacs transferred to Profit and Loss Accounts. The resolutions read as under:

"Resolves that the Articles of Association of Company, be and are hereby, altered by adding the following new Sub-clause 49-A:

49A : Subject to the provision of the Companies Act, 1956, as amended up to date, the company may by Special Resolution, reduce the Share Capital of the Company in the manner as may be specified in the Resolution.

Mr. Santosh Bhutani seconded the Resolution.

Thereafter, the Resolution was put to vote by show of hands and was passed unanimously."

"Resolved that pursuant to Section 100 and any other applicable provisions of the Companies Act, 1956, and any amendment/substitution thereof, and subject to the confirmation of the Hon''ble High Court of Delhi at New Delhi, the balance in the Share Premium Account amounting to Rs. 686.92 lakhs and Debentures Forfeited Account amounting to Rs. 146.56 lakhs, be and is hereby, transferred to the Profit and Loss Account.

Ms. Puhshpinder Kaur seconded the Resolution.

Thereafter the Resolution was put to vote by show of hands and was passed unanimously."

2. The Minutes of Transfer of Capital Reserves to Profit and Loss Account, which are sought to be approved are as follows:

"That the balance in the Share Premium Account amounting to Rs. 686.92 lakhs and Debentures Forfeited Account amounting to Rs. 146.56 lakhs as on 31.2.2003 as appearing in the Balance Sheet of the petitioner company, be transferred to the Profit and Loss Account."

3. The registered office of the petitioner company is situated at 514, Shakuntala Apartment, 59, Nehru Place, New Delhi-110019, which is within the territorial jurisdiction of this Court.

4. The petition is accompanied by copies of Memorandum and Article of Association shareholding pattern; latest Income Tax returns, list of creditors as on 30.11.2003. Balance-sheet and Profit and Loss Account for the year ending 31.3.2003; Board Resolutions and Minutes of the extraordinary general meeting of the shareholders of the petitioner company held on 29.11.2003.

5. It is pleaded that petitioner company does not owe any debt or loan payable to the public, any other financial institution of Bank or other Body Corporate. The authorized share capital of petitioner company is stated to be Rs. 15.0 crores divided into 1,50,000 Equity Shares of Rs. 10/- each. The paid-up capital of company as on 31.3.2003 was Rs. 5,62,80,820/- divided into 38,67,680 Equity Shares of Rs. 10/- each having been issued and fully paid-up aggregating in Rs. 3,86,76,8007- and Rs. 1,76,04,0207- as against 37,31,700 Equity Shares forfeited in the petitioner company. It is further pleaded the petitioner company has very few creditors for the total outstanding amount of Rs. 5,7397- as on 30.11.2003. The petitioner company has carried forward losses of Rs. 16,65,52,3407- as on 31.3.2003 which have been incurred over the period of time in the normal course of business mainly due to steep downfall in the value of investments on account of drastic recession in the investment and merchant banking sector due to severe recession in the trade and industry after 1995; (ii) business losses; and (iii) accumulated depreciation. The losses have already been reflected in the books of account of petitioner company for the year ended on 31.3.2003 duly maintained and audited by the statutory auditor of the company. It is also pleaded that the petitioner company has also unanimously

passed a special resolution in its extraordinary general meeting held on 29.11.2003 as noted above resolving for the transfer of balances of, (i) Share Premium Account of Rs. 6,86,92,0007- and (ii) Debentures Forfeited Amount of Rs. 1,46,56,0007- as on 31.3.2003 and aggregating to Rs. 8,33,48,000/- to the Profit and Loss Account thereby transferring the "Capital Reserves" to the Profit and Loss Account. It is also pleaded that share premium account and debenture forfeited account being capital reserves in nature, any transfer of the same to the General Reserve Account or Profit and Loss Account would be treated as "Deemed Reduction of Capital", despite the fact that there is no actual reduction of capital of the company and it does not involve any payment of money to any shareholder or reduction in the liability of the shareholder as contributory and do not require any cash outflow. Registrar of Companies has filed its reply submitting that the Central Government has no objection to the proposed Transfer of Capital Reserves to Profit and Loss Account.

6. For the foregoing reasons, the petition is allowed. The Form of Minutes quoted above for Transfer of Capital Reserves to Profit and Loss Account, are approved. Minutes be registered u/s 103(1)(b) of the Companies Act. Copy of the approved minutes be filed with the Registrar of Companies within six weeks. Notice of registration of this order and the approved minutes by the Registrar of Companies be published by the petitioner in "Hindustan Times" (English) and "Nav Bharat Times" (Hindi).

Petition stands disposed of. dusty.

