(2015) 06 MAD CK 0455

In the Madras High Court

Case No : C.P. No. 217 of 2015

In Re: Cedres Industries India Private Limited

Date of Decision : 24-06-2015

Acts Referred:
Companies Act, 1956 — Section 100, 101, 102

Citation : (2015) 06 MAD CK 0455

Hon'ble Judges : Pushpa Sathyanarayana, J

Bench : Single Bench

Advocate : N.P. Vijaykumar and M. Gopikrishnan, Central Government Standing Counsel, for the Appellant

Final Decision : Allowed

Judgement

Pushpa Sathyanarayana, J—This petition is filed under Sections 100 and 101 of the Companies Act, 1956 read with Rules 11(a)(3) and 46 of the Companies (Court) Rules, 1959, for confirming the reduction of equity share capital as approved by the equity shareholders of the petitioner company and to approve the form of minute to the effect that,

"The capital of Cadres Industries India Private Limited is henceforth Rs. 2,92,31,400 (Rupees Two Crore Ninety Two Lakh Thirty One Thousand Four Hundred only) divided into 2,92,314 (Two Lakh ninety two thousand three hundred fourteen only) of Rs. 100 each reduced from Rs. 7,42,31,400/- (Rupees Seven Crore Forty Two Lakh Thirty One Thousand Four Hundred only) divided into 7,42,314 (Seven Lakh Forty Two thousand Three Hundred Fourteen Only) equity shares of Rs. 100/- each. At the date of registration of this minute 292,314 equity shares have been issued and are deemed to be fully paid (and the remaining 450,000 equity shares are unissued)".

2. The petitioner company was incorporated on 7th May 2007 and is presently engaged in the business of Sub Contract works in piping and structural fabrication and erection in power plants. The nature of business carried on and the object of the petitioner company is detailed in Clause III(A) of the Memorandum of Association. Certified copy of the Certificate of incorporation and

the Memorandum and Articles of Association is marked as Annexure -1. The authorised share capital of the petitioner Company as on 31st March 2014, is Rs. 9,00,00,000/- divided into 9,00,000 equity shares of Rs. 100/- each. The issued, subscribed and paid-up capital of the petitioner company as on 31st March 2014 is Rs. 7,42,31,400/- divided into 742,314 equity shares of Rs. 100/- each. Certified copy of the Financial Statements for the financial year ended 31st March 2014, is marked as Annexure-2.

3. On 21.01.2015, the Board of Directors of the petitioner company convened the Meeting and resolved to reduce the equity share capital. The certified copy of the Board resolution is marked as Annexure - 3. Accordingly Extra-ordinary General Meeting was held on 13.02.2015, wherein shareholders of the petitioner company unanimously passed the special resolution approving the reduction of share capital. The special resolution passed on 13.02.2015 marked as Annexure - 8, reads as follows:-

"RESOLVED THAT pursuant to Sections 100 and other applicable provisions, if any, of the Companies Act, 1956, and subject to confirmation of Hon''ble High Court, Madras/Tribunal, the existing paid up share capital of the Company be and is hereby reduced from Rs. 7,42,31,400/- (Rupees Seven Crore Forty Two Lakh Thirty One Thousand Four Hundred only) divided into 7,42,314 (Seven Lakh Forty Two thousand Three Hundred Fourteen Only) equity shares of Rs. 100/- each to Rs. 2,92,31,400/- (Rupees two crores ninety two lakhs thirty one thousand four hundred only) divided into 2,92,314 (Two lakh ninety two thousand three hundred fourteen only) equity shares of Rs. 100/- each and said reduction be effected by repayment of Rs. 450,00,000 (Rupees Four crores fifty lakhs only) of the paid up share capital to its members in proportion to their investment."

In the light of the special resolution passed unanimously approving the reduction of capital, this petition is filed before this Court for reduction of equity share capital and to end all inquiries and directions necessary and proper be made and given and also for approving the proposed minute. The petitioner also seeks liberty of this court for dispensing with the words ''and reduced''.

4. In Comp.A. No. 512 of 2015, the petitioner has sought for permission to dispense with the procedure of settlement of list of creditors and dispense with advertisement. Since the petitioner company has sufficient assets including cash and bank balances to satisfy its creditors and the reduction of share capital does not involve the diminution of any liability in respect of unpaid capital and will neither affect its creditors, vide order dated 29.04.2015, this Court has dispensed with the settlement of the list of creditors and dispensed with advertisement of the petition.

5. Publication containing the advertisement of hearing of the petition was effected in one issue of English daily ''''The New Indian Express'''', Chennai Edition, on 21.05.2015 and also in another issue of Tamil daily "Dinamani",

Chennai Edition on 21.05.2015.

6. Notice has been issued to the Regional Director, Ministry of Corporate Affairs, Chennai, for filing his objection. The Regional Director has filed his report stating no objection for the proposed reduction of equity share capital of the petitioner company.

7. As stated in the petition and as seen from the financial statements filed, the decision taken to have a true reflection of the financial position of the company is purely a commercial decision. Considering the fact that such move has been approved by the overwhelming majority of the shareholders, apart from the fact that such reduction does not involve the diminution of any liability in respect of unpaid capital and will neither affect its creditors, since the petitioner company has sufficient assets including cash and bank balances to satisfy its creditors, this Court does not find any impediment in granting the relief prayed for herein. Consequently, this petition seeking approval to the resolution passed is hereby granted.

8. Clause (a) of sub Section (2) of Section 102 of the Companies Act, 1956, provides that the Court may, for any special reason, if it thinks proper so to do, direct the company to add the words ?and reduced? to its name on the last words thereof during the period commencing from the date of the Court(tm)s order till such time as the court specifies in its order. The purpose of such inclusion is only to put on notice the investing public the state of affairs of the company and that it has gone for reduction of the capital. Taking note of the circumstances warranting the course for reduction of capital, viz., such reduction does not involve the diminution of any liability in respect of unpaid capital and will neither affect its creditors, since the petitioner company has sufficient assets including cash and bank balances to satisfy its creditors, the procedure laid down under Section 100 of the Companies Act,1956 fully complied with, there is no impediment in granting the prayer confirming the reduction of capital as resolved by the company in its special resolution dated 13.02.2015, so as to be binding on all the shareholders and creditors of the petitioner company. The words "and reduced" pursuant to the reduction approved, is dispensed with. In the light of the above said facts, the prayers sought for herein are granted and the petition is allowed.

9. A certified copy of the order including the minutes as approved be delivered to the Registrar of Companies within twenty one days and the notice of the registration order by the Registrar of Companies and of the said minutes as approved by this Court be published in one issue of English daily ''''The New Indian Express'''' and also in one issue of Tamil Daily ''''Dinamani'''' within four weeks from the date of receipt of copy of the order.

10. The petitioner company is hereby directed to pay a sum of Rs. 5,000/- (Rupees five thousand only) towards fee to the Central Government Standing Counsel for Regional Director.

