(2015) 03 MAD CK 0592

In the Madras High Court

Case No : Company Petition No. 96 of 2015

In Re: ETA Power Gen Private Limited

Date of Decision : 30-03-2015

Acts Referred:
Companies Act, 1956 — Section 100, 100, 101, 101, 102
Companies Act, 2013 — Section 117

Citation : (2015) 03 MAD CK 0592

Hon'ble Judges : R. Mahadevan, J

Bench : Single Bench

Advocate : P.H. Aravind Pandian, Senior Counsel for Srinivasan, for the Appellant

Judgement

R. Mahadevan, J—This Company Petition is filed under Sections 100 to 104 of the Companies Act, 1956, read with Rules 11(a)(3), 46 and 47 of the Companies (Court) Rules, 1959, for confirming the reduction of the share capital of the Petitioner by setting off the accumulated losses as approved in terms of special resolution passed by the shareholders of the Petitioner on 30th December 2014 be confirmed; all enquiries and directions necessary and proper be issued; the proposed minute set out in paragraph 22 be approved; to dispense with the words "And Reduced" pursuant to the adjustment in the share capital be ordered and that the action taken may be approved.

2. Heard Mr. P.H. Aravind Pandian, learned Senior counsel appearing for the petitioner and Mr. M. Gopi Krishnan, learned Additional Central Government Standing Counsel appearing for the Regional Director, Southern Region, Ministry of Corporate Affairs, Chennai.

3. The petitioner Company was incorporated on 30.09.1999 as a Private Limited Company with the Registrar of Companies, Chennai. According to the petitioner Company, it is presently engaged in the business of generation and sale of power from bio-mass. While so, over the last four years, the petitioner has been incurring losses resulting in accumulation of substantial losses. The petitioner company made a profit of Rs. 1,48,62,163/- as per Profit and Loss Account for the financial year ended 31st March 2014; the financial statements reflect an

accumulated loss of Rs. 8,12,70,429/- due to carry forward of accumulated losses from previous financial years; on account of its accumulated losses, the net worth of the petitioner has been partially eroded, and the share capital of the petitioner is not adequately represented by its assets. The petitioner company in order to give true representation of the available assets of the Company obtain further investments in the company and to enhance and maximize the shareholders and other stakeholders value in the Company, the Board of Directors of the petitioner company, at their Boarding Meeting held on 20th December 2014, approved to reduce and adjust a significant portion of the losses for the Financial Year 2013-2014 against the equity share capital of the petitioner company which is unrepresented by the available assets. After the proposed adjustment/set off of the Equity Share Capital Account with that of the accumulated losses to the extent of Rs. 8,11,39,170/- out of the total accumulated losses of Rs. 8,12,70,429/-, the equity share capital account of the petitioner company will stand cancelled and reduced to Rs. 8,68,50,830/- divided into 86,85,083 equity shares of Rs. 10/- each from Rs. 16,79,90,000 divided into 1,67,99,000 equity shares of Rs. 10/- each. Further the paid up equity share capital will be reduced proportionally from all the equity shareholders by cancelling 483 equity shares for every 1,000 fully paid equity shares held by them in the petitioner company; the paid up equity share capital of the petitioner will stand reduced to Rs. 8,68,50,830/- divided into 86,85,083 equity shares of Rs. 10/- each. According to the petitioner company, the above proposal will not have any adverse effect on the creditors of the company; the equity shares proposed to be reduced are fully paid equity shares; the proposal does not involve either the diminution of any liability in respect of unpaid share capital or payment to any shareholder of any paid up share capital; the proposal does not involve any cash outflow and therefore would not affect the ability or liquidity of the petitioner to meet its obligations/commitments in the normal course of business and the proposed reduction will rationalize the capital structure and give a more accurate reflection of the capital assets of the petitioner. Article 57 of the Articles of Association of the petitioner company permits reduction of share capital by the petitioner. Having regard to the substantial amount of accumulated losses amounting to Rs. 8,12,70,429/- standing to the debit balance of the Profit and Loss Account as on 31st March 2014 and in accordance with the provisions of Section 100 of the Companies Act, 1956, approval of the shareholders was sought by the Board of Directors of the petitioner for the reduction of equity share capital by adjusting and setting off an extent of Rs. 8,11,39,170/- out of the total accumulated losses at an extra-ordinary general meeting convened for the purpose. A notice dated 20th December 2014 was issued to the shareholders of the petitioner in this regard.

4. The nature of business carried on by the petitioner Company is detailed in the Memorandum of Association, which is marked as Annexure-A. A copy of the Annual Report for the year ended 31st March, 2014 is enclosed as Annexure-B. The petitioner company has one secured creditor, namely, Indian Bank, Thousand

Lights Branch, Chennai which has given its letter of no-objection to the proposal for reduction of the equity share capital and the letter of consent is annexed as Annexure F. A copy of the notice dated 20th December 2014 calling for the extra-ordinary general meeting of the petitioner to pass the resolution for reduction of the share capital of the petitioner company along with the explanatory statement as required under Section 117 of the Companies Act, 2013, and a certified copy of the special resolution are filed and marked as Annexure C. A copy of the Special Resolution passed at the Extraordinary General Meeting of the Shareholders of the petitioner Company held on 30.03.2012 is marked as Annexure-E. A copy of the Form of Minute is marked as Annexure-E. According to the petitioner Company, the reduction of capital in terms of the special resolution will not in any way compromise the interests of or cause any prejudice to the creditors of the petitioner Company.

5. At this juncture, it is relevant to extract the Special Resolution passed at the Extra-Ordinary General Meeting of the shareholders of the petitioner Company held on 30th day of December, 2014, at the registered office of the petitioner Company, wherein, it was resolved as follows:-

"RESOLVED THAT pursuant to the provisions of Section 100 and other applicable provisions of the Companies Act, 1956 (to the extent not repealed) and other applicable provisions of Companies Act, 2013 (to the extent notified and in force) and rules made there under, Article 57 of the Articles of Association of the Company and subject to the approval and confirmation of the Honourable High Court of Judicature at Madras and such other approvals as may be required, the consent and approval of the members of the Company be and are hereby given that:

a) the paid up equity share capital of the Company be reduced from Rs. 16,79,90,000/- divided into 1,67,99,000 Equity Shares of Rs. 10/- each to Rs. 8,68,50,830/- divided into 86,85,083 Equity Shares of Rs. 10/- each, by reducing Rs. 8,11,39,170, which has been lost or is unrepresented by available assets, and that such reduction be effected by cancelling 483 paid up equity shares held in the share capital of the Company for every 1000 equity shares held by each of the shareholders proportionately in to the total paid up shares in the Company.

b) the accumulated losses of the Company to the extent of Rs. 8,11,39,170/-."

"Resolved further that the following Directors viz., Mr. Abdul Qadir Abdul Rahman Buhari and Mr. C.S. Vijayaraghavan be and are hereby severally authorized to:

(a) sign all vakalatnamas applications, affidavits, petition, documents and papers which are required to be signed and filed for the purpose of giving effect to this resolution;

(b) obtain consent letters from concerned persons to the reduction for share capital and approvals from other concerned authorities;

(c) to file the appropriate forms and documents including Form INC 28 and Form MGT 14 to the Registrar of Companies and such other appropriate authorities as may be required;

(d) Appear before the Registrar of Companies, Regional Director, High Court of Judicature at Madras and such other authorities as may be required on behalf of the Company in relation to the above;

(e) Appoint and engage any advocate, practicing company secretaries and chartered accountants for the purposes of giving effect to the aforesaid resolution;

(f) To do all such acts, deeds, matters, things, as it may in its absolute discretion, deem necessary, expedient, usual or proper and to settle any claim any question or difficulty that may arise with regard to the reduction of the paid up share capital;

(g) Do all acts, deeds, or things as may be required to give effect to and implement the reduction of share capital as confirmed by the High Court, or any other statutory authority as considered necessary to give effect to the above Resolution or to carry out such modifications/directions as may be ordered by the Hon''ble High Court of Judicature of Madras."

6. It is also relevant to refer to the Form of the Minute, which reads as follows:-

"The issued, subscribed and paid up equity share capital of the Company of Rs. 16,79,90,000/- divided in to 1,67,99,000 equity shares of Rs. 10/- each be reduced by Rs. 8,11,39,170 comprising of 81,13,917 equity shares of Rs. 10/- each, representing cancellation of paid up capital for setting off the adjusted accumulated losses of the Company as on 31st March 2014 amounting to Rs. 8,11,39,170 and the issued, subscribed and paid up equity share capital of the Company will be Rs. 8,68,50,830/- divided into 86,85,083 Equity Shares of Rs. 10/- each after the said reduction under Section 101 of the Companies Act, 1956 in terms of the special resolution passed by the Company in the extraordinary general meeting held on 30th December 2014. "

7. Publication containing the advertisement of the petitioner Company was effected in one issue of English daily "News Today", Chennai Edition, on 04.03.2015 and also in another issue of Tamil daily "Malai Murasu", Chennai Edition on 04.03.2015.

8. The Regional Director, Southern Region, Ministry of Corporate Affairs, Chennai, has filed an affidavit, wherein, in paragraph No. 6, he has pointed out that the petitioner company is regular in filing their statutory returns and no prosecution filed, no complaints pending and no inspection has been conducted. It is further stated in paragraph No. 8, that the scheme of reduction of share capital has been examined and has been decided not to make any objection to the scheme. The same is recorded.

9. In view of the above, this Company Petition is ordered-

(i) confirming the reduction of the share capital of the Petitioner company by setting off the accumulated losses as approved in terms of special resolution passed by the shareholders of the Petitioner on 30th December 2014;

(ii) approving the proposed minute set out in paragraph 22;

(iii) dispensing with the words "And Reduced" pursuant to the adjustment in the share capital and approving the action taken.

10. 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 "News Today" and also in one issue of Tamil Daily "Maalai Murasu" within four weeks from the date of receipt of copy of the order.

11. The petitioner Company is hereby directed to pay a sum of Rs. 5,000/- (Rupees Five Thousand only) towards fee to the learned Additional Central Government Standing Counsel.