(2009) 12 CAL CK 0045

In the Calcutta High Court

Case No : Company Application No. 726 of 2008 in Company Petition No. 221 of 2009

In Re: Globsyn Infotech Ltd. and In Re: Globsyn Technologies Ltd.

Date of Decision : 23-12-2009

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

Citation : (2011) 163 CompCas 25

Hon'ble Judges : Girish Chandra Gupta, J

Bench : Single Bench

Advocate : Hemant Sethi and S.S. Bajoria, for the Appellant;S.S. Sarkar and Mrs. Rituparna Maitra for the Central Government, for the Respondent

Judgement

Girish Chandra Gupta, J.—This is an application made by Globsyn Technologies Ltd., seeking sanction of the court to a scheme of amalgamation and an order in terms of prayers (g) and (h) which read as follows: (g) The reduction of share capital and utilisation of the securities premium account in terms of the scheme as approved by a special resolution passed by equity shareholders of the petitioner-company in their meeting held on February 23, being annexure F to the petition be confirmed and passed by this hon''ble court;

(h) The order sanctioning the scheme of arrangement be deemed to be an order confirming utilisation of the securities premium account within the meaning of section 102 of the Companies Act, 1956;

It appears that by an order dated December 24, 2008, this court ordered a meeting of equity shareholders for the purpose of considering and if thought fit with or without modification approve the proposed scheme of amalgamation between the petitioner herein and Synergy Log-in Systems Ltd. The scheme which was directed by the order dated December 24, 2008, to be considered by the shareholders of the aforesaid two companies disclosed the scheme of arrangements to be as follows:

The reduction and reorganisation of the share capital of the Synergy Log-in Systems Ltd. (''the transferee company'') and demerger of the corporate training division of Globsyn Technologies Ltd. (''the demerged company'') into Synergy Log-in Systems Ltd. (''the transferee company'') will be effected by a scheme of arrangement under sections 391 to 394 read with sections 78, 100 to 104 of the Companies Act, 1956.

2. It would therefore become clear that the scheme was that there shall be reduction of the share capital of the company known as Synergy Log-in Systems Ltd., the transferee company but surprisingly the prayer is for permission for reduction in the share capital of the transferor company.

3. It appears from annexure F to the petition, an unsigned document, that the following resolutions were adopted by the shareholders of the petitioner-company in an extraordinary general meeting held on February 23, 2009 at 12.45 p.m.:

Resolved that pursuant to the provisions of sections 78 to 100 and other applicable provisions of the Companies Act, 1956 and article 3 of the articles of association of the company and subject to the sanction by the hon''ble High Court at Calcutta, of the scheme of arrangement presented to the court under Company Application No. 726 of 2008 for arrangement between Globsyn Technologies Ltd., the demerged company and Globsyn Infotech Ltd. (formally knows as Synergy Log-in Systems Ltd.), the transferee company, the adjustment of capital loss against reconstruction reserve account and the subsequent withdrawal of reconstruction reserve account and set off thereof against share premium account thereby the share premium account shall stand reduced by Rs. 630.14 lakhs.

4. This meeting at 12.45 p.m. was chaired by one Shri R.C. Bhattacharyay, director of the petitioner-company. It is therefore clear that this resolution intending to reduce share capital of the petitioner-company was not a part of the scheme for which a chairperson was appointed by this court in order to ascertain the views of the shareholders. According to the prayers (g) and (h) quoted above the resolution resolving to reduce the share capital shall form part of the scheme whereas that resolution was not a part of the scheme presented to this court which culminated in an order dated December 24, 2008, passed by brother Sinha J. Prayer (g) is obviously based on the aforesaid unsigned resolution dated February 23, 2009, a copy whereof is annexure F to the petition.

5. The resolution seeking to reduce the share capital is patently contrary to the law. The petitioner-company is seeking to set off an alleged loss of Rs. 630.14 lakhs against the share premium account which is not one of the permitted modes of user of the share premium account as would appear from section 78 of the Companies Act.

6. In paragraph 21 of the petition the following allegations have been made:

It is further submitted that the proposed utilisation of share premium account as per clause 17 of the scheme amounts to reduction of capital of the petitioner-company by virtue of the provisions of sections 78 and 100 of the Act. As section 78 of the Act expressly provides that the provisions of the said Act relating to the reduction of share capital of a company shall, except as provided in section 78 apply even for adjustment of securities premium account as if were the paid-up share capital of the company and in the circumstances utilisation in the aforesaid circumstances as proposed would attract provisions of sections 100 to 105 of the Act for which the petitioner-company has passed special resolution in terms of section 100 of the Act at its extraordinary general meeting held on February 23, 2009. The reduction of the securities premium account as aforestated forms an integral part of the scheme of arrangement. The order of the hon''ble High Court sanctioning the scheme shall be deemed to be an order u/s 102 of the Companies Act, 1956, confirming the reduction of capital.

7. The reduction of the share premium account does not appear to have been contemplated as an integral part of the scheme of arrangement as would appear from a copy of the scheme which is annexure H to the petition. That precisely is the reason why the resolution seeking to reduce the share capital has separately been shown to have been adopted in an extraordinary general meeting of the share holders allegedly held at 12.45 p.m., on February 23, 2009 and the said meeting was allegedly chaired by the director of the petitioner-company. Whereas the chairpersons appointed by brother Sinha J. were two learned advocates of this court. Therefore, it is untrue to allege that the reduction of the share premium account formed an integral part of the scheme of arrangement. The object of the petitioner is clearly to appropriate the share premium account otherwise than in accordance with the permitted mode of user appearing in section 78 of the Companies Act.

8. On behalf of the Central Government an affidavit has been filed by the Regional Director Shri Uttam Chand Nahata, Director, Eastern Region, Ministry of Corporate Affairs wherein the following submissions have been made:

It is submitted that the accounting adjustments to be made in the books of account of the petitioner-company are stated at paragraph 17 of the scheme. It is further submitted that the accounting entries/adjustments, as a consequence of the scheme of arrangement, are to be made as per the Accounting Standard 14 notified by the Central Government u/s 211(3A) of the Companies Act, 1956. The petitioner-company may, therefore be, directed by the hon''ble court to make adjustments in its books of account as per the Accounting Standard 14 notified by the Central Government.

9. Mr. Sarkar, learned advocate appearing for the Central Government, submitted that the petitioner-company was obliged to follow the Accounting Standard u/s 211(3A) of the Companies Act, whereas the learned advocate appearing for the petitioner-company submitted that the Accounting Standard is not applicable to the scheme of arrangement. Prima facie, the contention of Mr. Sarkar appears to be correct but that question is a matter of secondary importance. The question of primary importance is whether this court can permit the reduction of the share

premium amount which in turn would amount to reduction in the share capital. In order to resolve this question views of the creditors have to be ascertained.

10. Accordingly the petitioner-company is directed to serve notice together with copies of this petition together with all annexures thereto to each of its creditors as also to publish the purport of the petition and the gist of the prayers made therein including the reduction in the share capital in the leading newspapers of Calcutta and Delhi. In Calcutta the publication should be made once in the Economic Times and once in the Ananda Bazar Patrika. The petitioner-company shall file an affidavit disclosing therein the list of its creditors as also evidence to show that each one of the creditors of the petitioner has been served with a copy of this petition seeking their views. This petition is made returnable six weeks after the Christmas vacation. Any one interested in supporting or opposing the prayers, made by the petitioner, shall be entitled to appear and participate in the proceedings. Urgent xerox certified copy of this judgment, be delivered to the learned advocates for the parties, if applied for, upon compliance of all formalities.

