
(2014) 01 GUJ CK 0037
In the Gujarat High Court
Case No : Company Petition No. 318 of 2013

In Re: Gujarat Road and Infrastructure Company Ltd.

Date of Decision : 31-01-2014

Acts Referred:

Companies Act, 1956 — Section 100 100 101 101 101(2)

Citation : (2014) 01 GUJ CK 0037

Hon'ble Judges : R.M. Chhaya, J

Bench : Single Bench

Advocate : Swati Soparkar, for the Appellant;

Final Decision : Disposed Off

Judgement

R.M. Chhaya, J.—This is a petition filed under sections 100 to 103 of the Companies Act, 1956 seeking confirmation of the proposed Reduction of the Issued, Subscribed and Paid up Equity Share Capital of Gujarat Road and Infrastructure Company Limited, the Petitioner Company. The petitioner company herein was promoted in the year 1999 and commenced the business in the year 2000. The company is engaged in the business of constructing and managing the toll roads in the state of Gujarat. However, as pointed out in greater detail in the Petition, due to inadequate profits or persistent losses during the initial period, the company had opted for corporate restructuring with the lenders under CDR Scheme. The Company has recently paid restructuring charges of Rs. 86,93,67,830/- . are reflected in the Unaudited Provisional Financial Statements as at December 18, 2013 in the form of unamortized loan restructuring charges. Since the unamortized amount of the restructuring charges is a sunk cost to the company and the paid up equity share capital is lost to that extent as is not represented by any asset; it was proposed by the Board of Directors of the Company that such unamortized amount be written off against the paid up equity share capital thereby reducing the paid up equity share capital. The said proposal will enable a more equitable and factual representation of the Company's assets and liabilities.

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

189 of the Companies Act, 1956, at the Extra Ordinary General Meeting of the shareholders of the petitioner company, held after due notice as provided in the Act, on the 17th December 2013, it was:

RESOLVED THAT pursuant to the provisions of Sections 100 to 104 and all other applicable provisions, if any, of the Companies Act, 1956 and Article 76 of the Articles of Association of the Company and subject to the sanction/approval by/of Hon"ble High Court of Gujarat at Ahmedabad and/or the National Company Law Tribunal and other appropriate authorities as may be necessary in this behalf, consent of the shareholders of the Company be and is hereby accorded to the Reduction of paid up equity share capital and to effect such Reduction by writing off its "Unamortized loan restructuring charges" against the paid up equity share capital, in such a manner that, the paid up equity share capital of the company be reduced from Rs. 142,39,90,900/- divided into 14,23,99,090 Equity shares of Rs. 10/- each to Rs. 55,46,23,070/- divided into 5,54,62,307 equity shares of Rs. 10/- each by cancelling 8,69,36,783 Equity shares.

RESOLVED FURTHER THAT the proposed reduction shall take effect by way of writing off of the Unamortized loan restructuring charges first against the amount of bonus issue of equity shares amounting to Rs. 50,85,68,190/- and the balance of Rs. 36,07,99,640/- against the paid up equity share capital existing before the bonus issue.

3. The Petition was admitted by this Court on 26th December 2013 and the same was ordered to be advertised in Ahmedabad edition of "Times of India", English daily and "Divya Bhaskar", Gujarati daily. The same direction has been complied with by the company and the notice of the petition has been duly advertised in the aforesaid newspapers on 9th January 2014. The same is confirmed by the affidavit dated 10th day of January 2014. Pursuant to the said advertisement no one has come forward to raise any objections opposing the sanction to the proposed capital reduction.

4. 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. The above proposal is not likely to have any adverse impact on the net worth of the Company. It would not in any way adversely affect the ordinary operations of the Petitioner Company or its ability to honour its financial commitments or to pay its debts in the ordinary course of business. The secured and unsecured creditors concerned would be paid in the normal course of business. Considering the same, while admitting the Petition this Court did not give any directions as required u/s 101(2) of the Act and procedure prescribed under rule 48 to 65 of the Companies (Court) Rules 1959, was dispensed with.

5. It is further pointed out that the petitioner company is a closely held company and has no investment from the public at large. Hence, the said reduction has no impact on public interest. In view of the same, it is not necessary to direct the petitioner to add the suffix "And reduced" to its name.

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 issued, subscribed and paid up equity share 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. It may also be noted that pursuant to the order dated 26th December 2013 read with the order dated 7th January, 2014, the applicant has published the notice in "Times of India", English daily, Ahmedabad edition and "Divya Bhaskar", Gujarati daily, Ahmedabad edition on 9.1.2014 and has also filed an affidavit of publication which is on record of this petition. Mrs. Soparkar, learned advocate for the applicant has pointed out that no objection has been received. Today, during the course of hearing also, no objection is raised by any objector. Cumulatively, therefore, considering all these factors, the resolution dated 17.12.2013 deserves to be confirmed and is hereby confirmed.

7. The minute proposed to be registered under Sec. 103(1)(b) is as follows:

MINUTE UNDER SEC. 103(1)

The issued, subscribed and paid up equity share capital of Gujarat Road and Infrastructure Company Limited was by virtue of a Special Resolution of the company passed on 17th December 2013 and by virtue of the sanction granted by the High Court of Gujarat on 31st day of January 2014, reduced from Rs. 142,39,90,900/- divided into 14,23,99,090 Equity shares of Rs. 10/- each to Rs. 55,46,23,070/- divided into 5,54,62,307 equity shares of Rs. 10/- each by cancelling 8,69,36,783 Equity shares.

Further, the said reduction shall take effect by way of first cancelling 5,08,56,819 bonus shares amounting to Rs. 50,85,68,190/- and then 3,60,79,964 shares amounting to Rs. 36,07,99,640/- of the paid up equity share capital existing before the bonus issue.

The same is hereby approved.

8. Thus, the prayers made in terms of Para 12(A), 12(B), 12(C) and 12(D) are hereby granted.

9. The petitioner is directed to publish the Notice of Confirmation of Reduction of Capital and approving of Minutes in the Ahmedabad edition of The Times of India - English daily and Divya Bhaskar- Gujarati daily, within 14 days of the registration of the order with the Registrar of Companies. The Petition is accordingly disposed off with no orders as to costs.