(2006) 08 RAJ CK 0015

In the Rajasthan High Court

In Re: Modern Denim Ltd.

Date of Decision : 18-08-2006

Acts Referred:
Companies Act, 1956 — Section 391

Citation : (2008) 88 SCL 221

Hon'ble Judges : Shiv Kumar Sharma, J

Bench : Single Bench

Judgement

Shiv Kumar Sharma, J.—The applicant Modern Denim Ltd., filed this application u/s 391 of the Companies Act, 1956 (''the Act'') for a direction of the Court as to the method of convening, holding and conducting the meeting of the secured creditors of the applicant company, as to the notices and advertisement to be issued, for the purpose of considering and, if thought fit, approving with or without modification, the scheme of compromise between Modern Denim Ltd., and its secured creditors.

2. That the applicant company was incorporated as Modern Suitings (P.) Ltd., in November 1977 as a part of Modern Group of Companies. As a part of an exercise to restructure its activity the Modern Suitings Ltd. spun off its suiting division to Modern Syntax (India) Ltd. in April 1993 under the scheme of arrangement approved by this Court. The name of Modern Suitings Ltd. thereafter was changed to the present name, i.e., Modern Denim Ltd.

3. The position authorized issued, subscribed and paid up capital of the applicant company as on date is detailed out in para No. 3 of the application.

4. The main objects of the applicant company as set out in the object clause of its Memorandum of Association, have been detailed out in para No. 4 of the application. The copy of the latest audited annual accounts of the applicant company for the year ended on 31-3-2006 has been submitted as Annexure B to the application.

5. That the applicant company failed to service its debts to the difficulties stated in the application. It was given out in the application that it is imperative in the

best interest of the company and also the creditors to settle the debts in terms of the Scheme of Compromise which would prevent the company from getting insolvent. Creditors would also be benefited through the channel of recovery if the company remains a running concern and the same is not put under liquidation.

6. It was submitted that the proposed scheme of compromise with secured creditors would enhance the opportunities of revival of the company by benefiting the company. The applicant company in its Board meeting approved the proposed Scheme of Compromise by unanimously passing a resolution in its meeting held on 10-8-2006 and the same has been filed with the application as Annexure D. The detailed terms of compromise is enclosed as Annexure E with the application. No proceedings under Sections 235 to 251 of the Companies Act are pending against the applicant company.

7. Having heard the learned Counsel for the applicant, on perusal of the entire application, it is ordered that the meeting of the secured creditor of the applicant company for the purpose of considering and if thought fit, approving with or without modifications, the proposed scheme of compromise shall be convened and held as per the following schedule:

Name Date and time Place

Secured creditors 20-9-2006 Hotel Meru Place, of the Company at 11.30 a.m. Sawai Ram Singh Road, (Wednesday) Opposite SMS Hospital, Jaipur

8. That at least 21 clear days before the days fixed for the meetings an advertisement convening the same and stating that copies of the said proposed scheme of compromise required to be furnished shall be furnished pursuant to Section 393 of the Act, 1956 and forms of proxy can be obtained free of charge at the office of the applicant company or from the office of its advocates be advertised once in the dailies namely, English News paper-Hindustan Times (New Delhi Edition) and Hindi News paper-Dainik Bhaskar (Jaipur Edition).

9. That at least 21 clear days before the meetings to be held as aforesaid a notice convening the said meetings at the place and time aforesaid, together with the copy of the said scheme of arrangement, a copy of the statement required to be sent u/s 393 of the Act, 1956 and the prescribed form of proxy, shall be sent by prepaid post under certificate of posting addressed to each of the secured creditors, whose meetings are to be held at the venue mentioned above.

10. That the advocates for the applicant company do, within the time as they consider necessary and at least within three days, file in Court the forms of the advertisement, the notices and statement to accompany the notices, and the same shall be settled by the Registrar of this Court.

11. Shri Vaibhav Gehlot, Advocate, Rajasthan High Court, Bench Jaipur shall be the Chairman of the meeting of the secured creditors to be held on 20-9-2006 at

11.30 a.m. as aforesaid. The applicant company shall deposit in the court or pay within one week from today an amount of Rs. 15,000 towards remuneration to the Chairman for presiding the meeting aforesaid. The applicant company shall also bear the expense of conveyance of the Chairman for the said meeting.

12. That the Chairman appointed for the meeting through applicant company, do issue the advertisement and send out the notices of the meeting referred to above.

13. That the quorum for the said meetings shall be as per the provisions of the Act, 1956.

14. That voting by proxy be permitted, provided that a proxy in the prescribed form duly signed by the person entitled to attend and vote at the meeting, is filed with the applicant company at their registered office, aforesaid not later than forty eight hours before the meeting scheduled to be held.

15. That the value of each secured creditors shall be in accordance with the books of the applicant company where the entries in the books are disputed, the Chairman shall determine the value for purposes of the meetings.

16. And it is further ordered that the Chairman do separately report to this Court the result of the said meeting within seven days of the conclusion thereof, and the said report shall be verified by his affidavit.

17. With these directions the application accordingly, stands disposed of.