

(2005) 08 RAJ CK 0071
In the Rajasthan High Court
Case No : Company Application No. 47 of 2005
In Re: Modern Syntex (India) Ltd.

Date of Decision : 12-08-2005

Acts Referred:

Companies Act, 1956 — Section 235, 236, 237, 238, 239

Citation : (2005) 64 SCL 520

Hon'ble Judges : S.K. Keshote, J

Bench : Single Bench

Advocate : Sandeep Taneja, for the Appellant;

Judgement

S.K. Keshote, J.—This is an application u/s 391 of the Companies Act, 1956 (for short, "the Act, 1956") for directions to convene a meeting of the secured creditors of the Modern Syntex (India) Limited having its registered office at A-4, Vijay Path, Tilak Nagar, Jaipur (hereinafter shall be referred to as "the applicant company") for the purpose of considering, and if thought fit, approving, with or without modification, the scheme of compromise proposed to be made between the applicant-company and its secured creditors.

2. The details of the present authorized and issued, subscribed and paid-up capital of the applicant-company have been given in para No. 3 of the application.

3. The main objects of the applicant-company have been briefly set out in para No. 4 of the application and the applicant-company has also enclosed its Memorandum and Articles of Association along with the application as Annexure-C.

4. The details of the incorporation, business activities and divisions through which the business is operated of the applicant-company, are set out in para No. 5 of the application.

5. In para No. 6 of the application the applicant-company has given out the reasons and grounds of sufferance of significant losses by it since 1997-98. Due to the reasons detailed out in para No. 6 of the application the net-worth of the applicant-company eroded and as a consequence thereof the applicant-company

submitted a reference before the Board of Industrial and Financial Reconstruction (for short, "BIFR") and the BIFR registered the same.

As a result of the above factors, it is stated in para No. 7 of the application, the applicant-company incurred heavy losses, which affected the liquidity position thereof and thus it became difficult for it to service its debts. Due to these various difficulties faced by the applicant, a necessity was felt for rescheduling and restructuring of its existing debts. The Board of Directors of the applicant-company, in its meeting held on 18-7-2005, approved the proposed scheme of compromise by unanimously passing a resolution to this effect. The applicant-company has enclosed the said resolution to the application as Annexure-D.

6. The terms of restructuring are incorporated in the scheme of compromise and the same have been enclosed to the application as Annexure-E. A list of secured creditors with whom the applicant-company proposes to enter into a scheme of compromise is set forth as Appendix-A to the Annexure-E.

7. Due to the difficulties faced by the applicant-company and narrated out in para No. 6 of the application, it is considered necessary in the best interest of the applicant-company and also the creditors to reconstruct the debts, which would prevent the applicant-company from getting insolvent. It is stated that the creditors would also be benefited through the channel of recovery if the applicant-company remains a running concern and the same is not put under liquidation. The applicant-company has given out the details, which would enhance the opportunities of its revival by benefiting the applicant-company in the manner detailed out in para No. 9 of the application.

8. In para No. 10 of the application the applicant-company has given out the details the date of notification and the period during which the applicant-company was declared as relief undertaking by the State of Rajasthan under the Rajasthan Relief Undertaking Act, 1961.

9. It is stated in para No. 11 of the application that no investigation proceedings have been instituted and/or pending in relation to the applicant-company under Sections 235 to 251 of the Act, 1956.

10. Having heard learned Counsel for the applicant-company and carefully gone through the entire application I am satisfied that it is a fit case for grant of relief as prayed for therein by the applicant-company.

11. Accordingly it is ordered that the meeting of the secured creditors of the applicant-company, for the purpose of considering and if thought fit, approving, with or without modifications, the scheme of compromise aforesaid, shall be convened and held at 10.30 A.M. on 20th of September, 2005 at Hotel Meru Palace, Tonk Road, Jaipur, as prayed by the counsel for the applicant-company.

12. That at least 21 clear days before the day fixed for the meeting an advertisement convening the same and stating that copies of the said scheme of compromise and of the statements 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 Advocate, be advertised once in the dailies, namely, Hindi Newspaper "Rajasthan Patrika" (Jaipur Edition) and English Newspaper "Times of India" (Delhi Edition).

13. That at least 21 clear days before the meeting to be held as aforesaid, a notice convening the said meeting at the place and time aforesaid, together with the copy of the said scheme of compromise, 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 creditors, whose meeting is to be held at the respective registered or last known addresses.

14. That the Advocate for the applicant-company do, within the time as he considers 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.

15. That Shri Manoj Pareek, Advocate, Rajasthan High Court Bench, Jaipur, shall be the Chairman of the meeting of the creditors to be held on 20th of September, 2005 as aforesaid. The applicant-company shall deposit in the Court or pay within one week from today an amount of Rs. 11,000 (Rupees eleven thousand only) towards remuneration to the Chairman for presiding the meeting aforesaid. The applicant-company shall also bear the expenses of conveyance of the Chairman for the said meeting.

16. 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.

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

17. 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 its registered office, aforesaid, not later than forty-eight hours before the meeting scheduled to be held.

18. That the value of each creditor shall be in accordance with the books of the applicant-company and, where the entries in the books are disputed, the Chairman shall determine the value for purposes of the meeting.

19. And, it is further ordered that the Chairman do 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.

20. With these directions the application accordingly stands disposed of.