

(2012) 09 DEL CK 0189

In the Delhi High Court

Case No : Company Petition No. 252 of 2012

In Re: M/s Kobelco Construction Equipment India Pvt. Ltd.

Date of Decision : 19-09-2012

Acts Referred:

Companies Act, 1956 — Section 101, 103(1)(b)
Constitution of India, 1950 — Article 17

Citation : (2012) 09 DEL CK 0189

Hon'ble Judges : Indermeet Kaur, J

Bench : Single Bench

Advocate : Virender Ganda, with Mr. Santosh Giri, for the Appellant; K.S. Pradhan, Dy. Registrar of ROC on behalf of RD. (North), for the Respondent

Judgement

Indermeet Kaur, J.—This petition u/s 101 of Companies Act, 1956 (hereinafter referred to as "the Act") has been filed by M/s Kobelco Construction Equipment India Private Limited (hereinafter referred to as the "Petitioner company") for confirming the reduction of its share capita. The registered office of the petitioner company is situated at New Delhi, within the jurisdiction of this court.

2. The petitioner company has been incorporated under the Companies Act, 1956 on 22nd November, 2006 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

3. The authorised share capital of the petitioner company is Rs. 200,00,00,00 divided into 20,00,00.000 equity share of Rs. 10/-each. The issued, subscribed and paid up share capital of the Company was Rs. 200,00,00,000 divided into 20,00,00,000 equity shares of Rs. 10/- each.

4. A copy of the Memorandum of Article of Association of the Petitioner company has been filed on record. The audited balance sheet, as on 31st December, 2011 of the petitioner company, along with the report of the auditors, has also been filed.

5. It is submitted by the petitioner that the company has been incurring losses since the last few years due to unavoidable and diverse reasons including

appreciation of Japanese Yen and US dollar as compared to Indian Rupees and the losses of the company, as on 31st December, 2011 have accumulated to Rs. 1,36,33,68,990/-. It is further submitted that the Board of Directors of the Company, in order to reflect true and fair view of the financial position and to "right size" the annual accounts, has decided to write off the said accumulated losses to the extent of Rs. 1,30,00,00,000 as a result of which the share capital was also decided to be reduced accordingly.

6. It is pleaded that the petitioner company is authorized under Article 17 of the Articles of Association of the company to reduce its share capital by passing a special resolution of this effect.

7. The Board of Directors of the Petitioner Company in their meeting held on 10th May, 2012 have unanimously approved the proposed reduction of the share capital of the petitioner company. A copy of the resolution passed at the meeting of the Board of Directors of the petitioner company is placed on record at pages 154-155 of the paper book.

8. A special resolution has been passed at the Extra Ordinary General Meeting of the equity shareholders of the Petitioner company held on 10th May, 2012 confirming the proposed reduction of the said paid up equity share capital. A copy of the minutes of the special resolution passed at the Annual General Meeting is placed on record at pages 156-157 of the paper book.

9. Learned counsel for the petitioner company has submitted that the proposed reduction does not involve either diminution of any liability in respect of unpaid share capital or payment of any shareholder of any paid up share capital and further that the proposed reduction of capital does not in any way affect the interests or rights of any of the creditors of the petitioner company. It is further submitted that 99.87% of the creditors of the company have already given their "no objections" to the proposed reduction of the share capital.

10. In the aforesaid background, this petition is filed seeking approval of the resolution passed at the Annual General Meeting held on 10th May, 2012. The form of Minutes proposed to be registered u/s 103(1)(b) of the Act is mentioned at Para 15 of the petition.

11. By order dated 21st May, 2012 citations were directed to be published in the Delhi editions of the newspapers "Business Standard" (English) and "Nav Bharat Times" (Hindi) in terms of the Companies (Court) Rules, 1959. An affidavit has been filed by the petitioner showing compliance regarding publication of citations in the aforesaid newspapers on 5th July, 2012. Copies of the newspaper clippings containing the publications have been filed along with the affidavit.

12. Despite publication of notice, no objection has been received from any creditor or any member of the public. Thus, there appears to be no legal impediment in allowing the present petition.

13. In response to the notice, the Regional Director (North) has filed his affidavit/

report dated 12.9.2012. The Regional Director has not raised any objection to the proposed reduction of paid up share capital of the petitioner company.

14. In view of the averments made in the petition and there being no objection from any creditor or any member of the public, the petition is hereby allowed. The resolution passed by the Petitioner company in its Annual General Meeting held on 10th May, 2012 for reduction of its paid up share capital is approved and confirmed. The "Form of Minutes" proposed to be registered u/s 103(1)(b), as given below, is also approved:

The issued, subscribed and paid-up share capital of Kobelco Construction Equipments India Private Limited, is henceforth Rs. 70,00,00,000/- (rupees seventy crores only) divided into 7,00,00,000 (seven crores) equity shares of Rs. 10/- (rupees ten) each, reduced from Rs. 200,00,00,000/- (rupees two hundred crores only) divided into 20,00,00,000 (twenty crores) equity shares of Rs. 10/- (rupees ten) each. At the date of registration of this minute, 7,00,00,000 Equity Shares numbered from 1 to 7,00,00,000 has been issued and are deemed to be fully paid up.

15. The petitioner company be dispensed with the requirement of adding the words "and reduced" as a suffix to the name of the Company.

16. A certified copy of this order be delivered to the Registrar of Companies within thirty days from today. The Registrar of Companies, on receipt of the certified copy of this order and minutes approved by this court, is directed to register the same and effect the necessary alteration with regard to the Company.

17. The notice of registration of this order and the resolution of the company shall be published in the "Business Standard" (English) and "Nav Bharat Times" (Hindi) within 14 days of the registration aforesaid.

18. The Petitioner Company shall deposit a sum of Rs. 50,000/- with the office of Registrar of Companies. The petition stands allowed in the above terms.

Dasti.