

(2002) 08 RAJ CK 0042
In the Rajasthan High Court
Case No : Company Petition No. 52 of 2000
In Re: Om Metals and Minerals Ltd.

Date of Decision : 09-08-2002

Acts Referred:

Companies Act, 1956 — Section 100, 101, 201

Citation : (2003) 43 SCL 381

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

Bench : Single Bench

Advocate : C.L. Pareek, for the Appellant;

Judgement

S.K. Keshote, J.—The petitioner M/s. Om Metals & Minerals Limited, a company registered under the provisions of Companies Act, 1956 (hereinafter referred to as the Act of 1956), having its registered office at Kothari Bhawan, 30-31, New Grain Mandi, Kota, filed this petition u/s 101 of the Act of 1956 for confirmation of the reduction of Share Capital.

2. In the petition the petitioner prays that reduction of capital resolved on by the special resolution set out in para 8 of the petition be confirmed, that to this end all inquiries and directions necessary and proper be made and given; that the proposed minute be approved; and that such further or other orders may kindly be made in the premises as to the Court may deem fit in the interest of the company and its shareholders.

3. In para 1 of the petition, the petitioners has given the events in respect of registration of the company. In para 2 the address of the registered office of the company has been given and along with this petition copy of memorandum of article of association has been enclosed to the petition. In para 3 of the petition the objects of the company are given.

4. The authorised capital of the company is Rs. 8,00,00,000 (Rs. eight crores) divided into 80,00,000 equity shares of Rs. 10 each of which 67,86,300 equity shares have been issued and out of issued share capital 48,44,000 shares have been fully paid up and 19,42,300 shares have been paid up ranging from Rs.

12.50 to Rs. 25 per share, the details of which are given in Schedule "A" appended to the petition.

5. The company after its incorporation commenced business and it has since been and still carrying on business successfully, as what stated in para 5 of the petition.

6. In para 6 of the petition stated that by virtue of Article 10 of articles of association of the company, it is provided that the company may, from time to time, by special resolution reduce its capital in any manner permitted by law. The text of Article 10 of the Articles of association of the company is reproduced in that para.

7. In para 7 it is stated that in spite of a number of reminders the shareholders defaulted in payment of unpaid allotment/call money in respect of shares held by them. What it is stated is that in order to make above shares fully paid up, the company has two options; first to forfeit the shares on which calls remained unpaid; and second to reduce the subscribed share capital to the extent of amount unpaid as per provision of sections 100 to 105 of the Act of 1956 read with Article 10 of the Articles of Association of the company.

8. It is stated that number of shareholders, who failed to pay the allotment/call money in respect of shares held by them, constitute a large portion of total shareholders of the company, it is considered to be unfair and against the interest of shareholders to forfeit the shares held by them. To protect the interest of shareholders, the company wishes to go for reduction of capital under Article 10 of Articles of Association of the company.

9. By special resolution of the company, duly passed in accordance with section 189 of the Act of 1956, at a general meeting thereof, held after due notice as provided in the Act on the 29th day of August, 2000, it was resolved :

1. In respect of 35,700 partly paid shares on which Rs. 12.50 is paid up including premium, 75 shares shall be cancelled for every 100 shares held.

2. In respect of 10,600 partly paid shares on which Rs. 18.75 is paid up including premium, 60 shares shall be cancelled for every 100 shares held and shareholders shall pay Rs. 1.25 in respect of each share held.

3. In respect of 52,500 partly paid shares on which Rs. 20 is paid up including premium, 60 shares shall be cancelled for every 100 shares held.

4. In respect of 18,08,000 partly paid shares on which Rs. 20 to Rs. 22.50 is paid up including premium, 60 shares shall be cancelled for every 100 shares held and balance (exceeding Rs. 20) shall be paid back in respect of each share held.

5. In respect of 35,500 partly paid shares on which Rs. 25 is paid up including premium, 50 shares shall be cancelled for every 100 shares held.

10. On implementation of the above resolution the subscribed and paid up share

capital stand to be Rs. 5,61,91,150 divided into 56,19,115 equity shares of Rs. 10 each fully paid up. The company has further resolved authorising the Board of Directors to move a petition to the Court for confirming the aforesaid reduction and Shri C.P. Kothari, Managing Director of the company was authorised to sign and verify the petition to appoint advocates, give power of attorney to any person and to do all such acts, deeds and things as may be necessary for obtaining the order of the court for reduction of capital in terms of resolution. As a consequence of the reduction of share capital, the liability of the shareholders which has been mentioned in Schedule "A" shall stand reduced by 5,69,55,000 and a number of shares held by such shareholders shall be ratably reduced to 7,75,115 shares so as to convert these shares in to fully paid up shares in the following manner :

(a) In respect of 35,700 partly paid shares on which Rs. 12.50 is paid up including premium, 75 shares shall be cancelled for every 100 shares held, the details of which have been mentioned in category I in Schedule "B".

(b) The shareholders which have been mentioned in category II in Schedule "B" shall have to pay Rs. 13,250 in total which will be demanded from them.

(c) In respect of 52,500 partly paid shares on which Rs. 20 is paid up including premium, 60 shares shall be cancelled for every 100 shares held, the details of which have been mentioned in category III in Schedule "B".

(d) An amount of Rs. 14,17,500 in total shall be refunded to some shareholders which have been categorised as category IV in Schedule "B".

(e) In respect of 35,500 partly paid shares on which Rs. 25 is paid up including premium, 50 shares shall be cancelled for every 100 shares held, the details of which have been mentioned in category V in Schedule "B".

11. The petition was placed for preliminary hearing on 22-12-2000. The court ordered for publication of notice in Hindustan Times and Rajasthan Patrika as per rules 15 days prior to next date fixed. The notice was published in Rajasthan Patrika, Jaipur edition dated 1-6-2001, Hindustan Times, New Delhi dated 2-6-2001 and Rajasthan Gazette dated 31-5-2001.

12. Counsel for the petitioner filed the affidavit on 8-3-2002 in form No. 26 as what required by Rule 55 of the Companies (Court) Rules, 1959. He made statement that no person has sent to him pursuant to notice published in the newspaper and gazette, a claim to be entered in the list for a lesser sum than in respect of which he has entered in the said list Annexure 3. It has next been stated that no claims have been sent to him in pursuance to the notice referred to in para 2 of the affidavit Shri C.P. Kothari by persons not entered on the said list "A" and claiming to be so entered. In spite of publication of the notice in the two newspapers and the gazette none of the creditors or shareholders appeared in person or by advocate to oppose or support the petition. Thus, the reduction of share capital of the company resolved and effected by resolution passed in the

general meeting of the said company is confirmed and the authorised share capital of M/s. Om Metal & Minerals Limited, is henceforth Rs. 8,00,00,000 divided into 80,00,000 equity shares of Rs. 10 each and the subscribed and paid up share capital of the company after reduction of subscribed share capital is Rs. 5,61,91,150 divided into 56,19,115 equity shares of Rs. 10 each fully paid up. At the date of the registration of this minute 56,19,115 equity shares have been issued and are deemed to be fully paid up and the remaining 23,80,885 equity shares are unissued.

13. A certified copy of this order be delivered to the Registrar of Companies, Rajasthan, Jaipur within 21 days of the date of receipt of a certified copy of this order. A notice of registration by the Registrar of Companies, Rajasthan, Jaipur of this order and that of said minutes be published in the Rajasthan Patrika, Jaipur edition, Hindustan Times, New Delhi edition and Rajasthan Gazette within 14 days of the registration aforesaid.

14. The company petition accordingly stands disposed of.