(2020) 02 NCLT CK 0062

In the National Company Law Appellate Tribunal

Case No : Company Petition No. 79/66/ND Of 2018

In Re: Om Refoils Private Limited Vs

Date of Decision : 20-02-2020

Acts Referred:

Companies (Accounts) Rules, 2014 — Rule 7
Companies Act, 2013 — Section 66, 66(1), 133, 232(2)(a)

Citation : (2020) 02 NCLT CK 0062

Hon'ble Judges : Ch. Mohd. Sharief Tariq, J

Bench : Single Bench

Advocate : Ayush Gupta, Tania Sharma, Lakshmi Gurung, Udit Atul Konkanthankar, Talha Abdul Rahman

Final Decision : Disposed Of

Judgement

Ch. Mohd. Sharief Tariq, J

1. Under consideration is CP-79/66/ND/2018, filed on 28.02.2018, under Section 66 of the Companies Act, 2013 (hereinafter referred as "Act, 2013"), r/w National Company Law Tribunal (Procedure for reduction of share capital of Company) Rules, 2016 (hereinafter referred as "NCLT Rules, 2016"), for confirming the reduction of preference share capital.

2. The Petitioner Company has made prayers as follows:

a. That the reduction of capital resolved on by the special resolution be confirmed.

b. That to this end all directions necessary and proper be made and given.

c. That the proposed minute be approved

d. That such further or other Orders be made in the premises as to this Authority shall deem fit.

3. It is stated that the Petitioner Company is a private company limited by shares. The Petitioner Company was incorporated on 01.04.1997 under the

provisions of Companies Act, 1956 (Act, 1956) in the name and style viz., Om Refoils Private Limited, and the Registered Office of the company is situated at II Floor, Z-156, Loha Mandi, Naraina, New Delhi, 110028.

4. The main object of the Petitioner Company is to carry on the business of manufacture, buy, sell, refine, explore, prepare, crusting, import, export or otherwise deal in oils, ghee, oil seeds, oil cakes, edible and non-edible oils, de-oiled cakes, proteins chemicals, food stuffs, food products, by products and ingredients thereof etc.

5. The Authorised Capital of the Petitioner Company is 30,000,000 (Three Crore) divided into 30,00,000 (Thirty Lakh Only) of Rs. 10 each, of which 17,48,940 (Seventeen Lakh forty eight thousand nine forty) shares have been issued and are fully paid up.

6. Article (s) 38, of the Articles of Association (hereinafter referred as AoA'), authorises the Petitioner Company for reduction of share capital which reads as follows:

"The Company may by special resolution, reduce in any manner and with, and subject to any incident authorised and consent required by law:-

(a) its share capital;

(b) any capital redemption reserve account or;

(c) any share premium account."

7. The reason and rational stated is that the reduction of share capital will result in return of capital in excess of the requirements of the Petitioner Company and will result in restructuring of its balance sheet.

8. The Board of Directors and the Shareholders in the Extra Ordinary General Meeting (hereinafter referred as "EoGM") held after due notice on 23.01.2018 by Special Resolution resolved to reduce the share capital in accordance with the provision of section 66 (1) of the Companies Act, 2013. It is stated that Seven (7) members were present and unanimously voted in favour of the reduction of share capital of the Petitioner Company. The relevant part of the Resolution is extracted as below:

"...approval of the Equity Shareholders be and is hereby accorded that the issued, subscribed and paid up equity share capital of Rs. 17,489,400/- (Rupees One Crore Seventy four Lakhs Eighty Nine Thousand Four Hundred Only) consisting of 17,48,940 (Seventeen lakh forty-eight thousand nine hundred and forty only) equity shares of Rs. 10/- each fully paid up be reduced to Rs. 1,74,894/- (Rupees One Lakh Seventy Four Thousand Eight hundred and Ninety Four only) consisting of 17,48,940 (Seventeen lakh forty-eight thousand nine hundred and forty only) Equity shares of Rs. 0.1/- each by reducing the paid up capital to the extent of 99% which is in excess of the business requirements of the company and be paid back to the existing shareholders in the ratio of their current shareholding...."

9. It is stated that the Petitioner Company does not have any Secured Creditors and there are only three (3) Unsecured Creditors who have given 'No Objection Certificate' for the reduction of share capital, which is placed on record. The Petitioner Company has placed on file a certificate from Statutory Auditor certifying that the Petitioner Company has not accepted any deposit and is not in arrears in the repayment of the deposits or the interest thereon as on the date of filing the petition under Section 66 of the Act, 2013.

10. It is further stated that the Accounting Treatment proposed by the Petitioner Company for the reduction of the share capital is in conformity with the Accounting Standards specified in Section 133 of Act, 2013 read with Rule 7 of the Companies (Accounts) Rules, 2014. To this effect, a certificate issued by the Independent Auditor viz. "Jain Passey & Associates Chartered Accountants, is placed on the file.

11. The Petitioner Company has filed the proof of paper publication both in English and vernacular containing the proposed reduction of share capital.

12. The Regional Director, Northern Region, Ministry of Corporate Affairs (RD) filed the Report/Affidavit on 29.08.2019, wherein under para 5 it is observed that there are seven (7) shareholders in the company however, as per the Annual Returns filed for 31.03.2018 there are only six (6) shareholders and no information pertaining to transfer of shares was furnished. Thus, all the material facts relating to the Petitioner Company are not disclosed as required under Section 232 (2) (a) of the Act, 2013.

13. The Petitioner Company filed reply wherein it was stated that ten (10) shares were transferred from Mr. Veenu Jain to Mr. Om Prakash Jain on 27.04.2017, thereby reducing the shareholders from seven to six and the details of such transfer is disclosed in part 4 (iii) under the heading "Details of Shares/ debentures transfers since closure dates of last financial year" in MGT-7 (Annual Return) filed for the year 2017-18. Secondly, it is stated that the observation pertaining to non-disclosure of information as required under Section 230 (2) (a) is not applicable, as the Petitioner company has filed application under Section 66 of the Act, 2013 i.e. Reduction of Share Capital. The RD in its additional Affidavit has stated that the RoC has stated that that the proposed reduction of share capital appears to be satisfactory.

14. The Income Tax Department (hereinafter referred as "ITD") has filed its report on 10.06.2019, wherein objections were raised regarding the non-availability of details of short term loans and advances for the Assessment Year 2017-18 & 2018-19, in this regard a notice was sent to the Petitioner Company to furnish the Income Tax Returns for the Assessment Year 2017-18 & 2018-19 alongwith all its annexures, schedules forming balance sheet and requisite documents.

15. The Petitioner Company filed reply to the Objections raised by the ITD, furnished the required documents. Therefore, the ITD has in its amended reply filed on 05.07.2019 has given no-objection for the reduction of share capital of the Petitioner Company.

16. Heard the Ld. Counsel for the Petitioner Company and the ARoC for the RoC, perused the Petition along with the documents placed on the case file. The Petitioner Company has made out a case for reduction of share capital, thus the order follows as under:-

ORDER

17. We hereby confirm the reduction of share capital of the Petitioner Company by approving the Minutes of the EoGM held on 23.01.2018, wherein the members consented by passing a Special Resolution, to reduce the paid up share capital to the extent of 99% which is in excess of the business requirements of the Petitioner Company and be paid back to the existing shareholders in the ratio of their current shareholding. The Petitioner Company therefore may cancel and extinguish paid up equity share capital of Rs. 17,489,400/- (Rupees One Crore Seventy four Lakhs Eighty Nine Thousand Four Hundred Only) consisting of 17,48,940 (Seventeen lakh forty-eight thousand nine hundred and forty only) equity shares of Rs. 10/- each fully paid up and to amend the Memorandum of Association suitably. Accordingly, the CP- 79/66/ND/2018 stands disposed of.

18. The Order is pronounced in the open court.

