(2008) 04 AHC CK 0108

In the Allahabad High Court

In Re: Regency Hospital Ltd.

Date of Decision : 18-04-2008

Acts Referred:
COMPANIES ACT, 1956 — Section 101, 103, 391, 394, 394A

Citation : (2008) 04 AHC CK 0108

Hon'ble Judges : S.U. Khan, J

Bench : Single Bench

Judgement

S.U. Khan, J.—Heard Sri R.P. Agarwal, learned Counsel for the petitioner.

2. In Company Application No. 13 of 2007, an order was passed on 06.12.2007 directing holding of meeting of shareholders and creditors of the applicant company, i.e. Regency Hospital Ltd., for approving the proposed Scheme of Arrangement between the applicant company and its creditors, shareholders and promoters, which was Annexure-1 to the said application and which had already been approved by Board of Directors of the Company on 01.09.2007. The meetings were to be held on 19.01.2008 under the Chairmanship of Sri Ashok Mehta (of the shareholders) and Sri Subhashish Banerji (of creditors) respectively. The meetings were accordingly held and affidavits of Chairmen Sri Ashok Mehta and Sri Subhashish Banerji were filed. Meetings were held after due publication/ intimation in daily English Newspapers """Poineer'' and """Economic Times'' and daily Hindi Newspaper """Amar Ujala''. Notices were issued to the individual shareholders and creditors also. Both the Chairmen have filed affidavits. According to the affidavit of Sri Ashok Mehta, Shareholders representing 52.66% of paid up share capital attended the meeting. Total numbers of Ballot Papers issued were 122 and those 122 voters/ recipients of Ballot Papers represented 4236350 votes. No vote was found invalid and every vote was cast in favour of the Scheme and no vote was cast against the Scheme. Similarly, it is mentioned in the affidavit of Sri S. Banerji, who was Chairman of the meeting of the creditors that 19 creditors attended the meeting in person and three creditors by proxy (total 22). In this manner, the represented creditors represented more than 95% of the total outstanding dues of the Company. All the creditors present either in person or through proxy voted in favour of the

Scheme of Arrangement.

3. Thereafter, company petition No. 06 of 2008 was filed seeking sanction of the Court to the Scheme of Arrangement. Necessary notices were directed to be published in the aforesaid three newspapers. Notice was also issued to Regional Director, Ministry of Corporate Affairs, Northern Region of NOIDA. Company Petition No. 55 of 2007 u/s 101 of the Companies Act was directed by order dated 06.12.2007 to be listed for hearing on 04.02.2008 along with Company Application No. 13 of 2007. Through the said Company Petition No. 55 of 2007, approval of Court for reduction of issued, subscribed and paid up share capital of the petitioner company has been sought, which is an integral part of Scheme of Arrangement. Regional Director, Northern Region, Ministry of Corporate Affairs, NOIDA has filed affidavit u/s 394A of the Companies Act stating therein that he has got no objection to the Scheme of Arrangement. Scheme of Arrangement is Annexure-1 to the Company Petition No. 06 of 2008.

4. Absolutely no objection from any quarter has been received to the Scheme of Arrangement.

5. It has been provided under the Scheme of Arrangement as in relation to reduction of capital that:

The Issued, Subscribed and Paid-up Share Capital of the Company shall stand reduced from Rs. 8,04,53,00/- comprising 80,45,300 existing Equity Share of Rs. 10/- each, fully paid up, to Rs. 80,45,300/- comprising of 8,04,530 new Equity Shares of Rs. 10/- fully paid up." [Para 3.1(i) of Scheme of Arrangement]

Pursuant to above reduction of issued, subscribed and paid up share capital, the existing equity shares shall stand cancelled and in lieu thereof the company shall issue and allot new equity shares of Rs. 10/- each fully paid up in the ratio ONE new equity share for every TEN existing equity shares of Rs. 10/- each fully paid up. [Para 3.1(ii) of the Scheme of Arrangement]

6. As shareholders and creditors have overwhelmingly approved the said Scheme of Arrangement and as Regional Director has not raised any objection and as there is absolutely no objection from any quarter and required statutory compliances have been made., hence Court does not see any reason to disapprove the same or not to approve the same.

7. In Para-8 of the company application, the main reasons for the Scheme of Arrangement inter alia are stated to be delay in project implementation, adverse capital market and delay in acceptance of petitioner Hospital as a comprehensive cardiac care/ cardiac surgery unit.

8. Every company (business house or man) is entitled to readjust its affairs in such manner, which may be most beneficial and may help in setting off the losses, if incurred. Due to changed and unforeseen circumstances also it becomes necessary to readjust the financial affairs.

9. Fusion and fission are great sources of energy.

10. Accordingly, no fault can be found with the decision taken by the Board of Directors and the initial stage and thereafter by shareholders and creditors.

11. Accordingly, Scheme of Arrangement (Annexure-1 to the Company Petition No. 06 of 2008) is approved and permision for reduction of capital as asked for in Company Petition No. 55 of 2007 is granted.

12. It is, therefore, ordered accordingly.

13. The office shall issue a formal order in the prescribed form within two weeks.

14. The petitioner company shall file certified copy of the order including the minute, as approved above, with the Registrar of Companies, Kanpur, within the prescribed period. The reduction in capital shall take effect upon such registration.

15. As required u/s 103(3) of the Companies Act, 1956, the petitioner company shall publish notice of registration of the certified copy of the order and the minute, within 30 days of such registration, in each of the editions of the three newspapers in which the petition was advertised, namely ''''Poineer'' in English, published from the Kanpur, ''''Economic Times'' in English, published from Delhi and ''''Amar Ujala'' in Hindi, published from Kanpur, indicating that the reduction in capital has been effected pursuant to the composite Scheme of Arrangement agreed upon with the secured term creditor and sanctioned by this Court under Sections 391/ 394 of the Companies Act.

16. All the three matters are accordingly disposed of.