

(2007) 09 DEL CK 0253

In the Delhi High Court

Case No : Company Petition No. 165 of 2007

In Re: Siel Ltd.

Date of Decision : 11-09-2007

Acts Referred:

Companies (Court) Rules, 1959 — Rule 85
Companies Act, 1956 — Section 100, 101, 102, 103, 103(1)

Citation : (2008) 144 CompCas 469 : (2009) 89 SCL 434

Hon'ble Judges : Rekha Sharma, J

Bench : Single Bench

Advocate : Anuradha Dutt, Adv Manisha Tyagi, Adv R.D. Kashyap, Deputy Registrar of Companies appeared in perso, for the Appellant;

Final Decision : Allowed

Judgement

Rekha Sharma, J.—This order shall dispose of this petition under Sections 101, 102 and 103 of the Companies Act, 1956, seeking reduction of share capital of the petitioner-company, Siel Ltd. up to an amount of Rs. 24,63,86,251 by cancelling equity share capital of Rs. 49,31,21,830, which amount shall be credited to the general reserve account of the company. The said reduction has been approved by a special resolution passed in accordance with Section 189 of the Companies Act, 1956 in the extraordinary general meeting held on June 11, 2007.

2. The petitioner-company was incorporated on March 27, 1961, under the Companies Act, 1956, under the name and style of India Refrigeration Industries Ltd. Thereafter, the name of the company was changed to Usha Refrigeration Industries Ltd. on April 21, 1962. The name was thereafter, again changed to Shriram Refrigeration Industries Ltd. on June 7, 1966. The name of the company was yet again changed to Shriram Industrial Enterprises Ltd. on May 20, 1992. Subsequently, the name of the company was changed to its present name on May 10, 1995, with the Registrar of Companies, NCT of Delhi and Haryana by the Registrar of Companies, NCT of Delhi and Haryana. The registered office of the petitioner-company is situated in the NCT of Delhi within the jurisdiction of this

Court.

3. The petitioner has produced a copy of its memorandum and articles of association. By Article 53 of the articles of association of the company, the petitioner-company has been empowered and authorized to reduce its share capital. The petitioner-company has also filed a separate petition for scheme of arrangement between Mawana Sugar Ltd. with the present petitioner along with this reduction petition.

4. The present authorized share capital of the petitioner/transferee company as on March 31, 2007, is Rs. 100,00,00,000 divided into 7,00,00,000 equity share of Rs. 10 each, 5,00,000 13.5 per cent, redeemable cumulative preference shares of Rs. 100 each and 25,00,000 0.01 per cent, redeemable cumulative preference shares of Rs. 100 each. The issued, subscribed and paid-up share capital of the company was Rs. 18,31,53,020 divided into 1,83,15,302 equity shares of Rs. 10 each.

5. The circumstances under which reduction of share capital of the petitioner-company has been sought are that the petitioner-company holds 50,000 equity shares of Rs. 10 each fully paid up in the transferor company, viz., Mawana Sugar Ltd. The said transferor company holds 80,00,000 equity shares of Rs. 10 each fully paid up in the transferee company. Pursuant to sanction of the scheme, the said shares held by the petitioner/transferee company in the transferor company and vice-versa shall be delivered up and cancelled. The authorized share capital of the transferor company shall stand added to and consolidated with the authorized share capital of the transferee company as an integral part of the scheme without any further act or deed.

6. It is stated that the said reduction of the share capital does not involve either diminution of any liability in respect of unpaid capital or payment to any shareholder of any paid-up capital and in view of the above none of the creditors or any class of them would suffer any loss and thereby object to the said reduction.

7. The petitioner states that paragraphs 5.1 to 5.8 of Part II of the scheme of amalgamation and arrangement encompasses the cancellation and reduction of the issued, subscribed and paid-up share capital of the company since the scheme of amalgamation and arrangement has been considered and unanimously approved by the board of directors by a resolution dated on June 11, 2007. The company is, therefore, entitled to reduce the share capital of the company. The copy of the minutes of the board meeting has been produced. The Part II of the scheme which provides for reduction of share capital is as under:

5.1 Upon coming into effect of this scheme and in consideration of the transfer and vesting of the undertaking of the transferor company in the transferee company, the shareholders of the transferor company, whose names appear in the register of members of the transferor company as on the record date shall, subject to the provisions of Clause 5.2 of the scheme as mentioned hereunder

without any further application or deed, be entitled to receive from the transferee company 3 (three) equity shares of value of Rs. 10 each in the transferee company as fully paid-up (hereinafter referred to as "the exchange shares") for ever)" 2 (two) equity shares of Rs. 10 each fully paid up held in transferor company. It is clarified that consequent to the reduction of share capital of the transferee company as provided for in Clause 5.2 below, the entitlement of the shareholders of the transferor company to the shares in the transferee company, i.e., the exchange shares shall also consequently reduce. The shares of transferee company held by transferor company (hereinafter called as "the cross holdings") shall be cancelled and no exchange shares entitlement shall arise on these shares.

5.2 (a) The equity share capital of the transferee company after cancellation of cross holdings but including the exchange shares entitlement pursuant to Clause 5.1 of this scheme shall become Rs. 73,95,08,081 (rupees seventy three crores ninety five lakhs eight thousand and eighty one only) comprising of 7,39,50,808 (seven crores thirty nine lakhs fifty thousand eight hundred and eight) equity shares of Rs. 10 each as fully paid up, which shall be reduced to Rs. 24,63,86,251 (rupees twenty four crores sixty three lakhs eighty six thousand two hundred and fifty one only) comprising of 2,46,38,625 (two crores forty six lakhs thirty eight thousand six hundred and twenty five) equity shares of Rs. 10 each as fully paid-up. The equity share capital mentioned above excludes 49,904 (forty nine thousand nine hundred and four) equity shares of the transferor company on which calls are in arrear at Rs. 3.50 per share. In case these shares are made fully paid up before the record date, these shares will also be entitled to new equity shares, as defined in Clause 5.3 below, in transferee company and the paid up equity share capital of transferee company will stand altered accordingly.

(b) It is clarified that the amount of Rs. 49,31,21,830 (rupees forty nine crores thirty one lakhs twenty one thousand eight hundred and thirty only) by which the share capital of the transferee company including the exchange shares entitlement is reduced in terms of Clause 5.2(a) above, shall not be paid to the shareholders of the transferee company but shall be credited to the general reserve account of the transferee company.

5.3 In view of Clauses 5.1 and 5.2, the transferee company shall, upon coming into effect of this scheme, actually issue and allot to the equity shareholders of the transferor company and transferee company, whose names appear in the register of members of the transferor company and transferee company as on the record date, equity shares mentioned hereunder (hereinafter called "the new equity shares") of the face value of Rs. 10 each in the transferee company as fully paid up, in the following manner:

(a) 1 (one) new equity share of Rs. 10 each fully paid-up of transferee company for every 2 (two) equity shares of Rs. 10 each fully paid-up held in transferor company, i.e., MSL.

(b) 1 (one) new equity share of Rs. 10 each fully paid-up of transferee company for every 3 (three) equity shares of Rs. 10 each fully paid-up held in transferee company, i.e., Siel.

5.4 The reduction of share capital of the transferee company pursuant to the scheme shall be given effect as an integral part of the scheme and the consent given to the scheme by the shareholders and the creditors of the transferee company shall be deemed to be their consent under the provisions of Section 100 and all other applicable provisions of the Act to such reduction of capital of the transferee company and the transferee company shall not be required to convene any separate meeting for that purpose. The order of the hon"ble High Court sanctioning the scheme shall be deemed to be an order u/s 102 of the Act.

5.5 The total number of new equity shares of transferee company to be issued and allotted to members of transferor and transferee company shall be at par, credited as fully paid-up and shall be on the following terms:

(a) The new equity shares to be issued and allotted in terms hereof will be subject to the memorandum and articles of association of the transferee company.

(b) Subject to the provisions of this scheme, the new equity shares to be issued and allotted to the shareholders of the transferor company and transferee company pursuant to this scheme shall in all respects, rank pari passu in respect of dividend, bonus, rights shares, voting rights and other corporate benefits. Until the effective date, the holders of the equity shares of the transferor company shall continue to enjoy their rights under their articles of association, including the right to receive dividend, if any, declared in accordance with the Act and the articles of association of the transferor company.

(c) After the issue and allotment of new equity shares to the members of transferor company and transferee company in accordance with the scheme is completed, an application shall be made for listing and/or admitting to trading the new equity shares of transferee company on the relevant stock exchange where the equity shares of transferee company are listed and/or admitted to trading as on the appointed date as may be decided by the board of transferee company.

(d) The existing share certificates of transferor company and transferee company shall stand cancelled and will not be eligible for trading on the scheme becoming effective. The shareholders who wish to hold new shares in electronic form should inform at the registered office of transferee company about their option of holding the new shares in such form and the new equity shares of transferee company shall be allotted to them accordingly.

(e) All the shareholders of the transferor company and transferee company who hold shares of transferor company and transferee company respectively in physical form, will be issued new equity shares in physical form (unless

otherwise communicated in writing to the transferee company), on or before such date as may be determined by the board of directors of the transferee company. Notwithstanding the foregoing, upon the new equity shares being issued and allotted, as aforesaid, the shares held in physical form held in the transferor company and transferee company shall be deemed to have been automatically cancelled and have no effect.

(f) No fractional certificate(s) shall be issued by the transferee company and transferee company in respect of any fractions which the members of the transferor company and transferee company may be entitled to on issue and allotment of the new equity shares as aforesaid by the transferee company. The board of directors of the transferee company shall instead, consolidate all such fractional entitlements and allot new equity shares in lieu thereof to a director or an officer of the transferee company or such other person(s) as the board of directors of the transferee company shall appoint in this regard who shall hold the new equity shares in trust on behalf of the members entitled to such fractional entitlements with express understanding that such director or officer or person(s) shall sell the same in market at such time(s) (not later than six months upon coming into effect of this scheme) at such price(s) and to such person(s) as it/he/they may deem fit, and pay to the transferee company the net sale proceeds thereof. Thereupon, the transferee company shall distribute the net sale proceeds, after deduction of applicable taxes/duties/levies, if any, to the members entitled in proportion to their respective fractional entitlements. In case the number of such shares to be allotted to the director/officer by virtue of consolidation of fractional entitlements is a fraction, one additional equity share will be issued in the transferee company to such director/ officer.

(g) In respect of equity shares of the transferor company where calls are in arrears, without prejudice to any remedies that the transferor company or the transferee company, as the case may be, shall have in this behalf, the transferee company shall not be bound to issue any new equity shares of the transferee company (whether partly paid or otherwise) nor to confirm any entitlement to such holder until such time as the call in arrears are paid, together with any charges that may be applicable according to the law.

(h)(i) The transferor company may declare and pay dividend, whether interim or final, subject to the provisions of the Act, to its equity shareholders for the financial year ending after the appointed date but prior to the effective date provided the board of directors of the transferor company has obtained the prior consent and approval of the board of directors of the transferee company before making such recommendation to the members of the transferor company.

(ii) The transferee company may declare and pay dividend, whether interim or final, subject to the provisions of the Act, to its equity shareholders for the financial year ending after the appointed date but prior to the effective date and no such dividend shall be payable to the shareholders of the transferor company in respect of their shareholding in the transferor company or their entitlement to

the new equity shares pursuant to this scheme if such dividend is declared prior to the effective date.

(iii) It is clarified that the aforesaid provisions in respect of declaration of dividends are enabling provisions only and shall not be deemed to confer any right on any member of the transferor company and/or the transferee company to demand or claim any dividends which, subject to the provisions of the said Act, shall be entirely at the discretion of the respective board of directors of the transferor company and the transferee company respectively, and subject to the approval of the shareholders of the transferor company and the transferee company respectively.

5.6 The issue and allotment of the shares under the provisions of this scheme to the non-resident shareholders will be made subject to applicable regulations of the Reserve Bank of India under the Foreign Exchange Management Act, 1999 and on such terms as the Reserve Bank of India may impose.

5.7 The transferee company holds 50,000 (fifty thousand only) equity shares of Rs. 10 each fully paid-up in transferor company. The transferor company holds 80,00,000 (eighty lakhs only) equity shares of Rs. 10 each fully paid up in transferee company. Pursuant to the scheme, the said shares held by the transferee in transferor and vice versa shall be delivered up and cancelled.

5.8 The authorized capital of the transferor companies shall stand added to and consolidated with the authorized share capital of the transferee company without any further act or deed.

8. The paragraph 5.4 of Part II of the scheme provides that the reduction of share capital of the petitioner/transferee company pursuant to the scheme shall be given effect as an integral part of the scheme and the consent given to the scheme by the shareholders and the creditors of the transferee company shall be deemed to be their consent under the provisions of Section 100 and all other applicable provisions of the Act to such reduction of capital of the transferee company and the transferee company shall not be required to convene any separate meeting for that purpose. However, vide order dated May 4, 2007, the court had directed the petitioner-company to hold separate meetings of its shareholders and creditors on June 11, 2007, for amalgamation of the scheme. In addition to the said meetings, the petitioner-company held a separate extraordinary general meeting of its shareholders for reduction of their capital on June 11, 2007, as an abundant precaution. In the said meeting, the resolution for reduction of share capital was passed as a special resolution. The scheme was approved by an overwhelming majority of shareholders and creditors of the petitioner-company.

9. In view of the approval of the equity shareholders and the fact that the proposed scheme does not affect the creditors, the petitioner-company has sought confirmation of the proposed reduction of capital and to get the minutes registered u/s 103(1)(b) of the Companies Act, 1956.

10. The form of the minute proposed to be registered u/s 103(1)(b) are as follows:

The paid up capital of the company, which, upon sanction of the scheme of arrangement between Mawana Sugars Ltd. and Siel Ltd. would become Rs. 73,95,08,080 (including the entitlement pursuant to the scheme) and would consist of 7,39,50,808 equity shares of Rs. 10 each which would be reduced as under:

From Rs. 73,95,08,080 (including the entitlement pursuant to the scheme) consisting of 7,39,50,808 equity shares of face value of Rs. 10 each fully paid-up to Rs. 24,63,86,250 consisting of 2,46,38,625 equity shares of the face value of Rs. 10 each fully paid-up by cancelling equity shares capital of Rs. 49,31,21,830 which amount shall be credited to the genera] reserve account of the company.

The equity share capital mentioned above, i.e., Rs. 73,95,08,080 (including the entitlement pursuant to the scheme) excludes calls in arrears at Rs. 3.50 per share due on 49,904 equity shares of Mawana Sugars Ltd. (transferor company). In case these shares are made fully paid up before the recorded date, these shares will also be entitled to new equity shares in the transferee company and the paid up equity share capital of transferee company will stand altered accordingly.

11. Pursuant to the petition filed by the petitioner vide order dated July 10, 2007, the notices were directed to be issued to the Regional Director and the official liquidator. The citations were also directed to be published in the newspapers The Statesman (English) and Veer Arjun (Hindi), in accordance with Companies (Court) Rules, 1959. However, vide order dated July 19, 2007, the said publication of citation was dispensed with on the ground that the reduction of share capital is being effected as an integral part of the scheme of amalgamation, for which a separate petition was filed along with this reduction petition.

12. Pursuant to the notice issued to the Regional Director, an affidavit of Sh. Rakesh Chandra, Regional Director, Northern Region dated August 24, 2007, has been filed deposing that the copy of the petition has been examined and the Regional Director is acquainted with the facts of the matter and the Central Government has no objection to the proposed reduction of share capital.

13. Section 100 of the Companies Act, 1956, authorizes a company to reduce the share capital and lays down the procedure for taking such action. This section reads as under:

100. Special resolution for reduction of share capital.--(1) Subject to confirmation by the Tribunal, a company limited by shares or a company limited by guarantee and having a share capital, may, if so authorised by its articles, by special resolution, reduce its share capital in any way; and in particular and without prejudice to the generality of the foregoing power, may?

(a) extinguish or reduce the liability on any of its shares in respect of share capital not paid up ;

(b) either with or without extinguishing or reducing liability on any of its shares, cancel any paid-up share capital which is lost, or is unrepresented by available assets ; or

(c) either with or without extinguishing or reducing liability on any of its shares, pay off any paid-up share capital which is in excess of the wants of the company;

and may, if and so far as is necessary, alter its memorandum by reducing the amount of its share capital and of its shares accordingly.

(2) A special resolution under this section is in this Act referred to as "a resolution for reducing share capital".

14. Sub-section (1) entitles a company under certain circumstances to reduce its share capital in any way. For doing this the company should be one which is limited by shares or limited by guarantee and having a share capital and that the articles of association of the company should authorise the company to reduce its share capital. Once these conditions are fulfilled, then reduction can be by a special resolution.

15. There has been a number of judicial pronouncements regarding reduction of share capital. The principles enunciated there can be summarized as under:

(i) The question of reduction of share capital is treated as a matter of domestic concern, i.e., it is the decision of the majority which prevails.

(ii) If majority by special resolution decides to reduce share capital of the company, it has also right to decide as to how this reduction should be carried into effect.

(iii) While reducing the share capital company can decide to extinguish some of its shares without dealing in the same manner as with all other shares of the same class. Consequently, it is purely a domestic matter and is to be decided as to whether each member shall have his share proportionately reduced, or whether some members shall retain their shares unreduced, the shares of others being extinguished totally, receiving a just equivalent.

(iv) The company limited by shares is permitted to reduce its share capital in any manner, meaning thereby a selective reduction is permissible within the framework of law.

(v) When the matter comes to the court, before confirming the proposed reduction the court has to be satisfied that (i) there is no unfair or inequitable transaction and (ii) all the creditors entitled to object to the reduction have either consented or been paid or secured.

16. In *Novopan India Ltd. In re In Re: Novopan India Limited*, the scheme of amalgamation of *Novopan India Ltd.* with *G.V.K. Hotels Ltd.*, was also involved

reduction of share capital. Relying on Rule 85 of the Companies (Court) Rules, 1959, regarding proposed reduction of the share capital, it was held that since the reduction has already been approved by the shareholders unanimously and even the creditors have given their consent to the proposed scheme of arrangement and since the secured creditors had expressed that they had no objection to the amalgamation and arrangement, it was not necessary for the transferor/transferee companies to report compliance with the requirement of Section 102 of the Act because no objection of the secured creditors was placed before the members and the same had also been produced before the court. The learned single judge held that since the resolution regarding the scheme of amalgamation and arrangement was passed unanimously by the shareholders, there was no reason not to treat the said resolution as satisfying all the requirements of the special resolution.

17. In the present case also the shareholders and the creditors of the petitioner-company have unanimously approved the scheme including the reduction of share capital and none are stated to be affected by such reduction. Considering the facts and circumstances it cannot be said that there has been any unfair or inequitable transaction so as not to permit the petitioner to reduce its share capital.

18. Consequently, there are no legal impediments or any valid reason for not accepting the proposed scheme of cancellation and reduction of share capital. The petition is allowed accordingly.

19. The resolution and the form of minutes proposed to be registered u/s 103(1) (b) of the Act as mentioned above for reduction of share capital of the petitioner-company is approved from the date of this order and the same is disposed of. A copy of the approved minutes be filed with the Registrar of Companies within six weeks.

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