

(2010) 09 P&H CK 0259

In the Punjab And Haryana At Chandigarh

Case No : Company Petition No. 62 of 2010 (O and M)

In Re: VXL Technologies Ltd.

Date of Decision : 17-09-2010

Acts Referred:

Companies Act, 1956 — Section 210A(1), 211, 211(3A), 211(3B), 211(3C)

Citation : (2011) 161 PLR 298 : (2010) 103 SCL 507

Hon'ble Judges : Hemant Gupta, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Hemant Gupta, J.—The Petitioner-company was initially incorporated as a Private Company limited by shares under the name of Eastern Electronics (Delhi) Private Limited on 28-12-1966. Subsequently, the name of the Company was changed to Unitron Limited and then to VXL Engineers Limited and thereafter to its present name i.e., VXL Technologies Limited when a fresh certificate of incorporation in the present name of the Company was issued on 16-7-2001.

2. The main object of the Petitioner-company is to manufacture, buy, sell, import, export, assemble, distribute, repair, exchange, alter or hire, buy or sell or to conduct, develop, enter into arrangements for setting up of all kinds of telecommunication equipments, like Rural Automatic Exchange, Private Automatic Branch Exchange, Transmission equipment modems, integrated digital network systems etc., as mentioned in Clause (3) of the Memorandum of Association. The Petitioner is said to have authorized share capital of Rs. 35,00,00,000 divided into 3,50,00,000 equity shares of Rs. 10 each. The issued, subscribed and paid up share capital of the Petitioner-company is Rs. 20,00,00,000 divided into 2,00,00,000 equity shares of Rs. 10 each, fully paid up as per Balance Sheet as on 31-3-2009.

3. It is pointed out by the Petitioner-company that the assets of the Petitioner carried in the books on historical basis do not adequately reflect true and fair view of the state of affairs of the Petitioner-company. The land and buildings of the Petitioner-company are over 40 years old and do not reflect their true net

worth in the books of the Petitioner-company. Part of the long term investments made by the Petitioner-company have since also permanently diminished in value and are now unrealizable. The Petitioner-company has substantial carried forward losses in the form of debit balance in the profit and loss account as shown in the assets side of the balance sheet of the Petitioner-company, which has no value. Therefore, the scheme is designed for reconstruction of the Petitioner-Company on the basis of estimated realizable values of its assets as on the appointed date.

4. It is also pointed out that the Petitioner-company has seven equity shareholders holding 2,00,00,000 equity shares of Rs. 10 each in the share capital of the Petitioner-company. In view of the said averments, the Petitioner has sought direction to dispense with the convening and holding of the meeting of the equity shareholders for the purposes of consideration and approval of the scheme. The Petitioner-company has sought notice of the present petition to the Regional Director, Ministry of Corporate Affairs, Noida and for publication of notices in the newspapers in exercise of the powers under the Company (Court) Rules, 1959.

5. The relevant averment in the petition seeking approval of this Court is as under:

6. The assets of the Petitioner-company which has been carried in the books on historical basis do not adequately reflect true and fair view of the state of affairs of the Petitioner-company. The land and buildings of the Petitioner-company are over 40 years old and do not reflect their true net worth in the books of the Petitioner-company. Part of the long term investments made by the Petitioner-company have since also permanently diminished in value and are now unrealizable. The Petitioner-company has substantial carried forward losses in the form of debit balance in the profit and loss account as shown in the assets side of the balance sheet of the Petitioner-company, which has no value. Accordingly, this Scheme is designed for reconstruction of the Petitioner-company by restating the assets of the company on the basis of their estimated realizable values as on the Appointed Date.

6. On 1-7-2010, learned Counsel for the Petitioner-company has sought some time to support his argument that revaluation of the assets of the company falls within the scope of expression "arrangement" within the meaning of Sections 390 and 391 of the Companies Act, 1956 (for short "the Act").

7. Learned Counsel for the Petitioner-company has argued that arrangement within the scope of Section 391 of the Act, is wide enough to include re-valuation of assets. Therefore, the present scheme of arrangement falls within the scope of Section 391 of the Act. It is also contended that the revaluation of assets is in terms of Section 211(3A), (3B) and (3C) of the Act and as per the Accounting Standards specified by the Institute of Chartered Accountants of India, therefore, this Court should dispense with the meeting of the equity shareholders and

sanction the scheme.

8. Learned Counsel for the Petitioner-company relies upon an order passed by the Bombay High Court on 11-4-2008. (In the matter of scheme of arrangement between Blue Star Limited and its shareholders), wherein scheme in respect of revaluation of assets of the Blue Star Limited, was approved. Some of the relevant provisions of the Act read as under:

211. Form and contents of balance-sheet and profit and loss account.-(1) to

(3)**

(3A) Every profit and loss account and balance sheet of the company shall comply with the accounting standards.

(3B) Where the profit and loss account and the balance sheet of the company do not comply with the accounting standards, such company shall disclose in its profit and loss account and balance sheet, the following, namely:

(a) the deviation from the accounting standards;

(b) the reasons for such deviation; and

(c) the financial effect, if any, arising due to such deviation.

(3C) For the purposes of this section, the expression "accounting standards" means the standards of accounting recommended by the Institute of Chartered Accountants of India constituted under the Chartered Accountants Act, 1949 (38 of 1949), as may be prescribed by the Central Government in consultation with the National Advisory Committee on Accounting Standards established under Sub-section (1) of Section 210A:

Provided that the standards of accounting specified by the Institute of Chartered Accountants of India shall be deemed to be the accounting standards until the accounting standards are prescribed by the Central Government under this sub-section.

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390. Interpretation of Sections 391 and 393. In Sections 391 and 393:

(a) the expression, "company" means any company liable to be wound up under this Act;

(b) the expression "arrangement" includes a reorganization of the share capital of the company by the consolidation of shares of different classes, or by the division of shares into shares of different classes or, by both those methods; and

(c) unsecured creditors who may have filed suits or obtained decrees shall be deemed to be of the same class as other unsecured creditors.

391. Power to compromise or make arrangements with creditors and members.-

(1) Where a compromise or arrangement is proposed:

(a) between a company and its creditors or any class of them; or

(b) between a company and its members or any class of them;

the Tribunal may, on the application of the company or of any creditor or member of the company, or, in the case of a company which is being wound up, of the liquidator, order a meeting of the creditors or class of creditors, or of the members or class of members, as the case may be, to be called, held and conducted in such manner as the Tribunal directs.

9. The expression "arrangement" as defined above includes a reorganization of the share capital of the company by the consolidation of shares of different classes, or by the division of shares into shares of different classes or, by both those methods. Such arrangement can be arrived at between company or its creditor or class of creditors or company or its members and any class of members. Thus for an arrangement, there has to be two parties who can arrive at some understanding in respect of the affairs of the company.

10. The revaluation of assets is that of a company and company alone, a separate and distinct judicial entity than its members. In terms of Section 49 of the Act, all investments made by the company on its own behalf is required to be made in its own name. The property of the company is neither of the creditors nor of its members. The company by process of revaluation is increasing the net worth of its assets unilaterally. Therefore, it is neither a compromise nor arrangement, falling within Clauses (a) and (b) of Section 391 of the Act for which approval of the company court is required or contemplated. It is pure and simple accounting process permissible to be undertaken by the company in terms of Section 211 of the Act. Therefore, the revaluation of assets simplicitor is not an arrangement falling within the scope of Section 391 of the Act.

11. Section 211 of the Act, envisages the preparation of balance sheets and profit and loss in accordance with the accounting standards fixed by the Indian Institute of Chartered Accountants. Section 211 of the Act does not envisage any approval from the Company Court before revaluating its assets. Only in case of deviation from the accounting standards, the Company is to disclose the same in its profit and loss account and the balance sheets, the reasons for such deviation and the financial effect arising due to such deviation. Reference may be made to Clause (3B) of section 211 of the Act. Therefore, the scheme as proposed by the Company" does not fall within the scope of either Section 391 of the Act nor revaluation of the assets requires permission of this Court in terms of Section 211 of the Act.

12. The order in Blue Star of the Bombay High Court passed in CP No. 233 of 2008, dated 11-4-2008 does not deal with the questions raised in the present petition. In the absence of any discussion on the issues arising for consideration in the present case, the said order is of no help to the Petitioner-company. Still

further, the scheme of arrangement was in respect of reorganization of reserves and revaluation of assets, adjustment of goodwill or any intangible that may arise on account of the acquisition of the electrical contracting business of Naseer Electricals Private Limited against the general reserve of the Company as well as for adjustment of any consideration, fees, incentives etc., payable to any employee or consultants in accordance with the business purchase agreement and its annexures thereof. In the said case the scope of the scheme of arrangement was wider than the proposed scheme of arrangement to revalue the assets of the Company alone. Revaluation of assets was only one part of the Scheme. Thus, the said order does not answer the question raised that the process of revaluation of assets of the company unitarily does not require any approval of the company court.

13. In view of the said fact, the scheme of arrangement, as proposed by the Petitioner-company, does not require any approval by this Court. Consequently, the present petition is dismissed with liberty to the Petitioner for appropriate action on its own, in accordance with law.