(1951) 04 P&H CK 0003

In the Punjab And Haryana At Chandigarh

Case No : Civil Miscellaneous No. 512 of 2006

In the matter of Jaiton Stock Exchange Association Ltd., Jaiton

Date of Decision : 09-04-1951

Acts Referred:

Citation : (1951) 04 P&H CK 0003

Hon'ble Judges : Kesho Ram Passey, J

Bench : Single Bench

Advocate : Jagan Nath and Dalip Chand, for the Appellant;

Final Decision : Dismissed

Judgement

Kesho Ram Passey, J.—This is an application u/s 56 of the Patiala Companies Act for an order confirming the reduction of the Company''s share capital by 90 per cent. It was stated in the application which was filed on 20-11-2006, that the Company had ceased to function and carry on its business, that its capital was lying idle and that it had consequently in its extraordinary general meeting held on 4-4-1948, decided to reduce the present share capital to ten per cent. Notice of the application was issued to the Registrar Joint Stock Companies and to the share and debenture holders of the Company. The application was opposed by Jaswant Rai share-holder and the Registrar but the former did not turn up after he had lodged his objections. It has been contended by Mr. Dalip Chand on behalf of the Registrar that the resolution on which the application is based was not sent by the Company to him, as required by law and that the Company had not added the words ''and reduced'' with its name from the date of the resolution of reduction. It has been further urged that the resolution dated 4-4-1948 had not been passed by a validly constituted meeting and that notice of that meeting had not been given to all the share-holders. No notice in particular was given to the Nabha Government who held 1,250 deferred shares of the value of rupees one hundred each. The following four issues were consequently framed:

1. Was the special Resolution dated 4-4-1948 passed in a validly constituted general meeting? Onus on the petitioner;

2. Is the applicant competent to make the application for reduction of the share capital of the Company? Onus on the petitioner;

3. Cannot an application u/s 56 of the Companies Act lie, because the Company has omitted to add the words ''and reduced'' after the name of the Company although a resolution in that behalf had been passed on 4-4-1948? Onus on the Registrar Joint Stock Companies;

4. Is the Pepsu Government, which is the successor of the erstwhile Nabha State entitled to a ''pro rata'' reimbursement on the fully paid up 1,250 deferred shares of Rs. 100/- each and has not the company sufficient funds to meet that liability? Onus on the Registrar Joint Stock Companies.

Neither side has led any evidence and Mr. Jagan Nath has further stated that he cannot discharge the onus of Issues Nos. 1 and 2. It must, therefore, be held that the resolution adopted at the meeting of 4-4-1948 was not a valid one and that the applicant Brij Lal, who has described himself as Deputy Managing Director of the Company has no locus standi to make this application. I should also follow that there is no material before me on which I could hold that the reduction of the share capital is justified or equitable and confirm the proposed reduction. It is admitted by Mr. Jagan Nath that the Nabha Government is the holder of 1,250 shares of the company and no notice of the meeting was given to this member. He has, however, stated that the Nabha Government is under certain circumstances only entitled to a share in the profits of the company and has no right to meddle with the reduction of its share capital. This may or may not be so, the fact remains that an important member holding 1,250 shares was not informed of the meeting held on 4-4-1948 and he is a member whose interests would be adversely affected if the proposed radical reduction of the share capital is carried out. If the company does not find it profitable to continue its business, it might close its doors and apply for liquidation but it cannot be permitted to resort to back-door methods to oust a member and cripple his interests which are by no means negligible.

2. It is next argued by Mr. Jagan Nath that although he has led no other evidence, an order of confirmation of the reduction of the share capital could be made on the strength of the Company''s resolution of the 4th of April 1948, alone. What I should in application of this kind be concerned with is to confirm the proposed reduction of the capital and not the resolution, but in this case besides the resolution there is no material on the basis of which I would make the confirmation order and the resolution in question is not a valid resolution as admitted by the learned Counsel himself. It must be by a special resolution carried at a general meeting, that the members of the company can decide to reduce the capital and if the necessary validating procedure like issue of notices to members is not observed the validity of the resolution must be affected and its value reduced to nullity. In spite of an issue requiring the Company to prove that the special resolution dated 4-4-1948 was passed in a validly constituted general meeting, no effort was made to meet the point raised in the issue and

the inference is justifiable that the Company did not lead any evidence, as it was cognizant of its weakness on the question and of the grave irregularities in the convening and conduct of the meeting. A validly passed resolution might have supplied prima facie evidence of the justifiability of the proposal to reduce the share capital. In the case before me the invalid resolution is the only evidence and on its basis alone an order confirming the reduction cannot be made. I, therefore reject the application. The applicant shall also pay the costs of the respondent which are fixed at Rs. 150/-/-.

