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(2019) 09 NCLT CK 0011

In the National Company Law Tribunal

Case No : Company Petition No. 790, 66 Of 2019

In The Matter Of: Transglobe Foods Limited And Another

Date of Decision : 16-09-2019

Acts Referred:

Citation : (2019) 09 NCLT CK 0011

Hon'ble Judges : Bhaskara Pantula Mohan, J;Shyam Babu Gautam, Member (Technical)

Bench : Division Bench

Advocate : Sonam Mhatre, Dhruval Sheth, Dhaval Vussonji

Final Decision : Allowed

Judgement

Shyam Babu Gautam, J

1. Heard the Learned counsel for the Applicant Company. No objector has come before the Tribunal to oppose the Application and nor any party has controverted any averments made in the Application.

2. The Counsel for the Applicant Company submits that Article 52 of the Articles of Association of the Company authorize the Applicant Company to reduce its share capital.

3. The Counsel for the Applicant Company submits that Continuous losses have substantially wiped off the value represented by the Capital, reserves and surplus and accordingly the financial statements do not reflect the correct picture of the health of the Company and for ensuring that the financial statements of the Company reflect the real picture and the Capital, reserves and surpluses which are lost are not continued to be shown on the face of balance sheet, it is necessary to carry out reduction of capital of the Company and since writing off losses has become inevitable for growth of the Company and its shareholders, the Company is now proposing to undertake a financial restructuring exercise whereby the Company would create a "Capital Restructuring Account" from its paid up Equity Share capital whereby the Company would write off Part off its debit balance of Profit and Loss Account and The reduction of share capital would

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cause the Balance Sheet to bring in true and fair representation of the Company by the available assets of the Company and reflect the real financial position of the Company and the financial restructuring will help the Company to reflect the true shareholder value which would place the company in a position to pay dividend or raise capital in future and the restructuring will also not cause any prejudice to the creditors of the Company. For the sake of clarity, it is specified that the reduction in Share Capital does not involve either the diminution of any liability in respect of any unpaid capital or the payment to any shareholder of any paid-up capital nor is any call being waived. The Creditors of the Company are in no way affected by the proposed restructuring by way of the reduction of capital as there is no reduction in the amount payable to any of the creditors, no compromise or arrangement is contemplated with the creditors. Further, the proposed adjustment would not in any way adversely affect the ordinary operations of the Company or the ability of the Company to honour its commitments or to pay its debts in the ordinary course of business and the reduction of share capital does not involve any cash out flow as the shares are getting extinguished against the debit balance of Profit and Loss Account.

4. The Counsel for the Applicant submits that the BSE Ltd has given its approval to the Applicant Company vide their letter DCS/AMAL/SD/R37/1323/2018-19 dated 5th November 2018 and thereafter the Extra Ordinary General Meeting Notice dated 12th November 2018 along with the Explanatory Statement was sent to the Equity Shareholders of the Applicant Company in due compliance with Provision of Companies Act 2013 for seeking approval of the shareholders to the scheme of reduction of Capital.

5. The Counsel for the Applicant submits that this Company Petition is for confirmation of the Special Resolution dated 2nd January, 2019 passed by the shareholders of Applicant Company with requisite majority for the purpose of proposed reduction of capital whereby the existing issued subscribed and paid up Equity share capital be reduced from Rs. 2,89,79,000/- divided into 28,97,900/- Equity Shares of Rs. 10/-(Rupees Ten only) each fully paid up to Rs. 14,48,950/- divided into 1,44,895 Equity Shares of Rs. 10/- (Rupees Ten only) each by canceling 27,53,005 Equity shares of Rs. 10/- each amounting to Rs. 2,75,30,050/- which is lost or un-represented by the available assets i.e. Debit balance in Profit and Loss Account.

6. The Regional Director has filed his Report dated 1st August, 2019, inter alia, stating therein that save and except as stated in paragraph 7(a) and (b) of the said Affidavit, it appears that the Scheme for Reduction of Capital is not prejudicial to the interest of shareholders and public.

7. In the paragraphs 6, and 7(a) and (b) of the said Affidavit, the Regional Director has stated that:

"6. ROC Mumbai in his Report No. ROC/STA/255807/U/S 66/1656 dated 11th June 2019 inter-alia mentioned that there is no inspection, investigation, inquiry,

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complaints, prosecution pending against the company. However, the status of the complaint verified from portal of MCA website, it is observed that two SRN for some complaint are pending but status of the same are not shown therein. A screen short of the same is annexed hereto and marked as Exhibit 'F'. Further the ROC, Mumbai at para 23 of his report inter alia mentioned that, the application may be decided on merits.

7. The observations of the Regional Director on the proposed Scheme to be considered by the Hon'ble NCLT as under.

(a) Applicant to submit an affidavit to the effect that the interest of the creditors and all stakeholders and Government Revenue are protected as well as statutory dues is paid off.

(b) The tax implication if any arising out of the proposal for reduction is subject to final decision of Income Tax Authorities. The approval of the Company Petition by this Hon'ble Court may not deter the Income Tax Authority to scrutinize the tax return filed by the company after giving effect to the proposed reduction. The decision of the Income Tax Authority is binding on the Petitioner Company Subject to the Observation made in para (a) and (b) above. Hon'ble NCLT may pass appropriate orders/order as deem fit and proper on merits"

8. So far as the observation of the Regional Director as stated in paragraph 6 of his Affidavit is concerned, the Applicant company submit that the Additional Chief Metropolitan Magistrate, Ahmedabad, vide its order dated 22nd October, 2013 have compounded the offences for delay in filing of Balance Sheet and Annual Return for the year ended 31st March, 2010. The Applicant Company is up-to-date in filing Balance Sheet and Annual Return till 31st March, 2018. Further the Applicant Company submits that MCA site shows the status of two (2) SRN No. Z01466833 and SRN No. Z01466835 as closed. The Applicant Company further submits that this is a Scheme of Reduction of Capital and hence the status of the company would not change and therefore complaint if any launched by MCA will continue. The Applicant Company has filed an affidavit dated 19th August, 2019 and the copy of which has been filed with the Office of Regional Director on 20th August, 2019.

9. So far as the observation of the Regional Director as stated in paragraph 7(a) of his Affidavit is concerned, the Applicant Company has filed an affidavit dated 19th August, 2019 and the copy of which has been filed with the Office of Regional Director on 20th August, 2019. The Petitioner Company through its Counsel undertakes that the interest of the creditors and Government revenue will be protected.

10. So far as the observation of the Regional Director as stated in paragraph 7(b) of his Affidavit is concerned, the Applicant Company has filed an affidavit dated 19th August, 2019 and the copy of which has been filed with the Office of Regional Director on 20th August, 2019. The Petitioner Company through its Counsel undertakes that the tax implication if any arising out of the proposal for

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reduction is subject to final decision of Income Tax Authorities. The approval of the Company Petition by this Hon'ble Court may not deter the Income Tax Authority to scrutinize the tax return filed by the company after giving effect to the proposed reduction. The decision of the Income Tax Authority is binding on the Applicant Company.

11. The Counsel appearing on behalf of the Applicant further submits that the Applicant Company has complied with all the statutory requirement as per the direction of the Tribunal and they have filed the necessary Affidavit in the Tribunal. Moreover, the Applicant Company also undertakes to comply with statutory requirements, if any, under the Companies Act 2013 and Rules made thereunder, as may be applicable.

12. The Applicant Company to publish notices about registration of the order and minutes of reduction by the Registrar of Companies, Mumbai, Maharashtra, in two Newspapers namely 'Free Press Journal' in English and 'Navshakti' in Marathi, both having wide circulation in the State of Maharashtra, within 30 days of registration.

13. The Applicant Company undertakes to file certified/authenticated copy of the order and Form of Minutes duly certified by the Deputy Registrar or Assistant Registrar, National Company Law Tribunal, Mumbai Bench with the Registrar of Companies within 30 days of receipt of this order.

14. Since, the requisite statutory procedure has been fulfilled; the Company Application has been made absolute in terms of the prayer clauses (a) & (c) of the Application.

15. That the minute set forth in the schedule hereto be and is hereby approved.

16. All concerned regulatory authority to act on the certified copy of the order and form of minutes forming part of the Application, duly certified by the Deputy Registrar/Assistant Registrar, National Company Law Tribunal. The Applicant Company undertakes to file certified/authenticated copy of the Order and form of Minutes with the Registrar of Companies, Maharashtra, Mumbai within 30 days from the date of the receipt of the order.

SCHEDULE

FORM OF MINUTES

"The Capital of Transglobe Foods Limited is henceforth Rs. 14,48,950/-(Rupees Fourteen Lacs Forty Eight Thousand Nine Hundred and Fifty only) divided into 1,44,895 Equity Shares of Rs. 10/- each fully paid up reduced from Rs. 2,89,79,000/- (Rupees Two Crores Eighty Nine Lacs Seventy Nine Thousand only) divided into 28,97,900 Equity Shares of Rs. 10/- each effected by cancelling 27,53,005 Equity Shares of Rs. 10/- each amounting to Rs. 2,75,30,050/-. At the date of this registration of this minute 1,44,895 Equity shares numbered 01 to 1,44,895 have been issued and are deemed to be fully

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paid up."

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