(2020) 09 NCLT CK 0002

In the National Company Law Appellate Tribunal

Case No : Company Petition No. 176 (ND) Of 2019

Jaipur Mahua Tollway Pvt. Ltd. Vs

Date of Decision : 24-09-2020

Acts Referred:
Companies Act, 2013 — Section 66, 66(5)

Citation : (2020) 09 NCLT CK 0002

Hon'ble Judges : Dr. Deepti Mukesh, J;Sumita Purkayastha, Member (Technical)

Bench : Division Bench

Advocate : Ashish Virmani, Harsha Gollamudi, Lakshmi Gurung

Final Decision : Allowed

Judgement

Sumita Purkayastha Member (T)

1. The present Application has been filed by the company for reduction of its share capital. The Applicant Company having CIN No. U4200DL2005PLC288617 was registered on March 18, 2005 under the Companies Act, 1956as a Company Limited by Shares and has its registered office at S- 217, Ground Floor Panchsheel Park, New Delhi, South Delhi-110017, which falls within the territorial jurisdiction of this Bench. It is engaged in the business of design, engineer, build, construct all kinds of infrastructure projects and building projects including civil construction work and conveniences and to negotiate for and obtain, from the government, conventions, subsidies, toll collection rights and or other assistance in furtherance to the above mentioned work.

2. The share capital of the Applicant as on 31st March, 2019 is given as under:

Particulars

Amount

Authorized Capital

Equity Shares

19,55,00,000 Equity Shares of Rupees

10/- each

1,95,50,00,000

Total

1,95,50,00,000

Issued, Subscribed and Paid Up

Share Capital

14,01,41,936 Equity Shares of Rupees

10/- each

1,40,14,19,360

Total

1,40,14,19,360

3. The Applicant has filed this application under section 66 of the Companies Act, 2013 for obtaining sanction for the Scheme of Reduction of Share Capital of the Applicant Company. The Board has considered the present business model, the future revenues and the other business factors and it is of the opinion that the present shareholder`s funds available with the Applicant Company are in excess of its wants/requirements and which cannot be effectively deployed in the business. The Board of Directors are of the view that the Applicant Company does not require such excess capital for its business operations and such excess capital impacts the return on equity and earnings per share therefore the Share capital of the Applicant Company be reduced in the following manner ("Proposed Capital Reduction"):-

A. The Paid- Up Share Capital of the Applicant Company is reduced from Rs. 1,40,14,19,360/- consisting of 14,01,41,936/- equity shares of Rs 10/- each fully paid up to 1,31,05,10,260/- consisting of 13,10,51,026 equity shares of Rs. 10/- each fully paid up.

B. Rs. 9,09,09,100/- (consisting of 90,90,910 equity shares of Rs. 10/- each fully paid up) is the amount by which the Share Capital, of the Company will be reduced, being in excess of the requirements of the Company. The fair value of equity shares in connection with deciding consideration for the cancellation/ extinguished equity shares has been determined on the basis of valuation report by Manish Ramphal & Associates, Charted Accountants. As per the valuation report, the equity share of the Company is Rs.66/-per share.

C. Such reduction be effected by cancelling 90,90,910 equity shares of RTs. 10/- each, fully paid up which are held by the existing shareholders along with a premium of Rs. 56/- per share (premium aggregating to 50,90,90,960/-).

D. The aforesaid reduction is to be effected by paying off a sum of Rs.

60,00,00,060/- (@ Rs. 66/ share on 90,90,910 equity shares) to the equity shareholders of the Company and automatic cancellation of the corresponding equity shares of the Scheme being sanctioned by NCLT and without requiring any action from such shareholders.

4. The Board of Directors has passed the resolution on 21.11.2019 in the Board meeting which they have accorded approval for reducing the Paid-up share capital of the company. Pursuant to the above notices dated 22.11.2019 along with the Explanatory Statement for convening the Extraordinary General Meeting of all the members of the Applicant Company were sent.

i. At the extraordinary general meeting held on 26.11.2019 at 10.00. AM. The members of the Applicant Company have unanimously approved the proposed Capital reduction by passing a special resolution.

ii. Certified true copy of the Notice along with the Explanatory Statement sent to the Equity shareholders of the Applicant Company have been filed on record.

iii. In lieu of extinguishment of Share Capital, the Paid-up Share Capital of the Company shall stand reduced to the extent of the face value of the shares so extinguished on the record date.

5. That as on 20.11.2019, there are two Secured Creditors and twenty eight unsecured creditors in the Applicant Company. The Applicant Company in this regard has obtained a Certificate from MKPS & Associates Charted Accountants (FRN 302014E) dated 22.11.2019 that the list of Creditors is correct as per the records of the Company. The Applicant has obtained the written consent from unsecured creditors and are annexed as Annexure -12 of the Petition along with written consent of the Secured Creditors filed as additional documents on 13.01.2020 (Pg. 41-44). The total amount of debt of 28 Unsecured Creditors is Rs. 1,11,68,14,744/- and 2 Secured Creditors is Rs. 2,719,084,099/-.

6. The Articles of Association of the applicant company, in Article 9 provides for reduction of the share capital by way of special resolution be passed. Hence, the reduction of share capital is as per the Articles of Association of the Applicant Company.

7. Vide order 06.12.2019 this bench directed the applicant to make the publication of the application which was complied and the compliance affidavit was filed on 13.01.2020.

8. The Regional Director, Northern Region, Ministry of Corporate Affairs, New Delhi, after receiving the report from the Registrar of Companies has filed his report dated 11.03.2020. On perusal of the above representation of the Regional Director, the following observations have been made therein:

i. That M/s Cube Highways and infrastructure Pte. Ltd, a Singapore Company is holding 100% shares of the Applicant company along with 6 other nominee shareholders. As proposed in the scheme, the excess capital (amounting to

Rs.60,00,00,060/- by way of reduction of 90,90,910 equity shares for Rs. 66 each) shall be paid back to the existing shareholders. Hence, the reduction shall result in remittance of money to the Singapore based entity. Hence, the applicant company may be asked to obtain the approval of the Reserve Bank of India on the Scheme of reduction of share capital and also to direct the Applicant to submit an undertaking as regards compliance of the RBI norms on the subject issue.

ii. That it is observed that the Scheme is silent as regards the money to be paid back to the existing shareholders under which head of accounts. As such the Applicant may be directed to clarify the position in this regard by way of filing an affidavit.

iii. That as per the reports of the Registrar of Companies, the Applicant company has filed Annual Return and Balance sheet upto 30.03.2019. No prosecution has been filed and no inspection or investigation has been conducted in respect of the Applicant Company.

9. The Applicant Company has filed an Undertaking in the form of an affidavit on 13.03.2020 with respect to the above mentioned observations made by the Regional Director and states that:

i. the Applicant company hereby undertakes that Foreign Exchange Management Act, 1999, the Reserve Bank of India Act, 1934 and the rules and regulations framed there under and any other applicable law does not envisages the requirements of taking an approval/ No objection from the RBI on the Scheme of reduction of share capital. However a copy of the petition has been served to the RBI on 12.03.2020.

ii. Further the Applicant Company undertakes that all the necessary requisite FEMA 1999, compliances as required by the RBI for payment of consideration to the foreign shareholder(s) of the Applicant Company will be duly complied with. The Company will be paying off the reduced capital from the balance which will be available in its bank accounts on the date of payment. No other assets will be adjusted against the Reduction of capital.

10. We have gone through the report of the Income Tax Department filed on 06.08.2020 raising certain observations/objections along with the reply dated 17.08.2020 filed by the Applicant in response to the observations/objections. We are of the view that the averments made by the Applicant in response to the observations/objections raised by the Income Tax Department are satisfactory.

11. The Applicant along with the written submissions has filed a previous judgement of the Hon`ble Principal bench in the matter of Jaipur Mahua Tollway pvt ltd CP no. 1169 of 2016 decided on April 24, 2017 wherein the Principal Bench has allowed the Petition and Reduction of Share Capital.

12. Taking into consideration the above and since there is no objection from any quarter in respect of prayer made for reduction of capital as contemplated by the

Applicant Company, this Tribunal directs :

i. That the reduction of the share capital of the above company as resolved by the special resolution passed at the Extra Ordinary General meeting held on the 26.11.2019 as follows is allowed and as follows:

The Paid- Up Share Capital of the Applicant Company is reduced from Rs. 1,40,14,19,360/- consisting of 14,01,41,936/- equity shares of Rs 10/- each fully paid up to 1,31,05,10,260/- consisting of 13,10,51,026 equity shares of Rs. 10/- each fully paid up.

That the paid-up share capital of the Applicant company of Rs. 9,09,09,100/- consisting of 90,90,910 equity shares of Rs. 10/- each fully paid up, be cancelled as mentioned above from the Paid up share capital of the Applicant Company.

Refund of amount of Rs. 60,00,00,060/- (consisting of 90,90,910 equity shares of Rs. 10/- each fully paid up along with a premium of Rs. 56/- per share) being paid to the shareholders from the Applicant Company by appropriate disposal/ adjustment of current/non-current assets on reduction of Paid up share capital of the Applicant Company.

ii. The undertaking given in the affidavit dated13.03.2020 and noted in para 8 shall remain binding; the approval shall remain subject to fulfilment of any law if otherwise applicable.

iii. That the form of minute under section 66(5) of the Companies Act, 2013 as set out in thepetition hereto, be and is hereby approved.

iv. That a certified copy of this order including the minute as approved be delivered to the Registrar of Companies within thirty days of receipt of the order and paper publication confirming the reduction of Paid up share capital by this Tribunal l shall also be issued in the English and Hindi Edition of the newspaper "The Business Standard" in the prescribed format within a period of thirty days from the date of this order.

