

(2005) 10 AHC CK 0174
In the Allahabad High Court

Noida Toll Bridge Co. Ltd.

APPELLANT

Vs

Secured Creditors of Noida Toll Bridge Co. Ltd.

RESPONDENT

Date of Decision : 24-10-2005

Acts Referred:

Companies Act, 1956 — Section 391(1), 394

Citation : (2007) 79 SCL 565

Hon'ble Judges : Sunil Ambwani, J

Bench : Single Bench

Judgement

Sunil Ambwani, J.—Heard Sri Naveen Sinha, Senior Advocate, assisted by Sri Vipin Sinha for the petitioner and Sri Yashvvant Verma for objector.

2. This is a confirmation petition under Sections 391(1) and 394 of the Companies Act, 1956 for confirming the "Scheme of Arrangement", between M/s. Noida Toll Bridge Company Ltd., and its secured creditors for effecting the restructuring of the debt of the petitioner company, owed to the secured creditors including Deep Discount Bond holders on the terms and conditions specified in the said Scheme of Arrangement which essentially provide for reducing the interest liability to 8.5 per cent per annum. The petitioner company is a special purpose company and is promoted by Infrastructure Leasing and Financial Services Ltd. (IL & FS) for the purpose of development, construction, operation and maintenance of the bridge across the river Yamuna connecting Delhi and Noida on a Build-Own-Operate-Transfer (BOOT) basis at a total project cost of Rs. 408.17 crores. The Company borrowed Rs. 285.77 crores from Banks, Financial Institutions and by raising Deep Discount Bonds. In terms of the Prospectus, the DDBs Holders had the option of selling the DDBs to the Take-out Lenders at the end of 5th and 9th year from the date of issue for Rs. 9,500 and Rs. 16,500 per DDB respectively. This facility was not made available to other Secured Creditors.

3. The petitioner Company has constructed the Noida Toll Bridge at a total cost of Rs. 408 crores with debt financing to the extent of approximately Rs. 286 crores

and equity financing to the extent of Rs. 122 crores. The debt was raised in 1998 at an interest cost of approximately 16 per cent per annum. The project was commissioned on 7-2-2001.

4. It is contended that most of the petitioner Company's expenses are fixed in nature viz., interest, depreciation and maintenance. The actual traffic and revenue is much lower than projected figures and reduction in tariff did not bring about any significant reduction in expenses. The Company had an accumulated net losses of Rs. 79.16 crores as on 31-3-2003 which have gone up to Rs. 100.26 crores as on 31-3-2004 and hence the Company is unable to sustain the high interest burden.

5. In order to reduce the interest burden, the petitioner approached the CDR Empowered Group set up under the Corporate Debt Restructuring (CDR) Scheme with a proposal for restructuring repayment of a principal sum of Rs. 235.77 crores and interest due thereon to the Banks and Financial Institutions from the Company. The proposal was duly approved by the CDR Empowered Group at their meeting held on 29-10-2002. On approval the CDR Scheme became effective from 1-4-2002, thereafter the petitioner Company approached the CDR Empowered Group set up under the CDR Scheme in January 2004 for restructuring of Deep Discount Bonds (DDB's). The said proposal was consented to by a majority of 54 per cent of the DDB Holders (by value) being the eligible creditors within the purview of CDR Scheme.

That the object and purpose of filing this petition, as stated by the petitioners' company, are set out as below:

The petitioner Company being engaged in the highly capital intensive infrastructure project had to face heavy debt burden as the initial debt was borrowed at a very high cost. That in case the proposed Scheme of Arrangement is allowed, the petitioner Company's debt service rate would reach to a manageable level.

Due to lower actual traffic and high overhead expenses the petitioner Company is faced with mounting losses. The accumulated net loss of Rs. 70.16 crores as on 31-3-2003 have gone up to Rs. 100.26 crores as on 31-3-2004 and hence the petitioner Company is unable to sustain a high interest burden. Therefore, the proposed Scheme of Arrangement would help in achieving the purpose of reducing the interest burden on the petitioner Company.

That the sanction of the Scheme is in favour of the general public, shareholder, employees and other public financial institutions and banks who have provided financial assistance to the petitioner Company.

That the sanction of the Scheme would enable the petitioner Company to honour its commitment as there would be parity between the revenues earned and the service cost of the debt which as on today is very high. It is submitted the very survival of the petitioner Company is dependant upon the sanction of the

Scheme otherwise the petitioner Company would face the liquidation resulting into loss to the secured creditors including financial institutions, shareholders, employees etc.

6. By an order dated 13-7-2004, this Court directed the meeting of the secured creditors to be convened by the petitioner Company on 18-9-2004 and fixed a quorum as 75 by number and 98 per cent by value of the secured creditors. Sri S.O.P. Agarwal was appointed as Chairman and Sri S.K. Mehrotra as the alternate Chairman of the meeting. By a revised order dated 13-8-2004 a quorum of the meeting was modified as 75 by number and 60 per cent by value of the secured creditors (including 2 per cent by value of the DDB Holders).

7. The meeting was held and has been certified by its Chairman Sri S.O.P. Agarwal. It was pointed out that 117 secured creditors holding secured debt worth Rs. 33,071.95 lakhs constituting 92.36 per cent (including 18.28 per cent of DDB holders) of the total secured debt of Rs. 35,805.71 lakhs as on the record date i.e., 23-8-2004 were present. Out of them 12 numbers of secured creditors holding secured debt worth Rs. 26,528.04 lakhs constituting 74.09 per cent of the total secured debt were present through representative. 36 numbers of secured creditors holding DDBs worth Rs. 5,974.63 lakhs constituting 16.69 percent of the total secured debt were present in person. 69 numbers of secured creditors holding DDBs worth Rs. 569.28 lakhs constituting 1.59 per cent of the total secured debt were present through proxies. After ascertaining the quorum, the Chairman Shri S.O.P. Agarwal started the proceedings of the meeting by explaining the relevant portion of the scheme of arrangement and explaining the order of the High Court. Some of the secured creditors raised their objections to the scheme of arrangement. The Chairman received the objections in writing and duly filed them with the Hon'ble High Court along with his report. Out of the secured creditors present in person or by proxy or through authorized representatives at the meeting, 89.09 percent of the secured creditors voted in favour of the resolution and 10.91 per cent voted against the resolution. Out of the 117 secured creditors present in person or proxy or as authorized representatives, 99 voted in favour of the resolution, while 18 voted against the resolution. The poll results were duly scrutinized by Mr. S.K. Mehrotra, the Alternate Chairman appointed by the Hon'ble High Court with the assistance of the statutory auditors of the Company M/s. Luthra and Luthra. The statutory auditors of the Company duly certified the poll results.

8. By order dated 8-10-2004 the Court directed the notice on the confirmation petition to be published in newspaper namely "Financial Express" in English and "Hindustan" in Hindi both published from Delhi and having their circulation in Noida. The notice was duly published in "Financial Express" in English dated 5-11-2004 and in "Hindustan" in Hindi on 6-11-2004.

9. Objections have been filed by Sahara India Life Insurance Company holding 4,000 Bonds of Rs. 5,000 each, Sahara India Financial Corporation Ltd., holding 28,437 Bonds of Rs. 5,000 each. Bajaj Allianz General Insurance Company holds

4,280 Bonds of Rs. 5,000 each. The Sahara India Life Insurance Company and Sahara India Financial Corporation, represented by Sri Yashwant Verma. It is confirmed by him and stated at the bar that all these three objectors have withdrawn their objections. This leaves the objections of Sri Anil Khandelwal and Sons, HUF (Anil Khandelwal) holding 77 bonds of Rs. 5,000 each, Autometcrs Alliance Ltd. (Autometers) holding 800 bonds of Rs. 5,000 each, Pioneer Securities Ltd. (Pioneer) holding 443 bonds of Rs. 5,000 each.

10. Sri Piyush Agarwal, Adocale appearing for Bajaj Allianz General Insurance Company, also confer and states at the Bar that his clients do not have any objection to the proposed Scheme of Arrangement.

11. Sri Naveen Sinha learned Counsel for petitioner states that Sri Anil Khandclwalhas sold all his bonds except 5, as on 30-9-2005. The Autometer Alliance Ltd., have also sold all their bonds except 3, as on 30-9-2005, and Pioneer Securities Ltd., have also sold all the bonds except 15, as on 30-9-2005 and thus the objectors with a total 23 bonds of the value of Rs. 1.5 lakhs, out of the total Deep Discount Bondholders valued at Rs. 50 crores, are objecting to the Scheme.

12. The Court allowed Sri Piyush Agarwal appearing for these remaining objectors with only 23 bonds to address the Court, whether the Scheme of Arrangement in any way prejudicial to the interest of shareholders, creditors or is not in public interest. He was not able to place any such submissions or rely upon any material to support the objections.

13. Sri U.C. Nahta, Regional Director, Northern Region, Ministry of Company Affairs, has filed his report dated 10-11-2004. In paragraphs 3 and 4 of this report, he submits as follows :

3. That the Deponent craves leave to submit that on a perusal of the Chairman's Report of the meeting of the secured creditors of the petitioner company held on 18-9-2004, a copy of which is enclosed with the petition, it is observed that out of 117 secured creditors entitled together to debts of Rs. 330.72 crores, who participated in the voting, 99 Secured Creditors entitled together to their debts of Rs. 294.65 crores voted in favour of the Scheme and 18 secured creditors entitled together to their debts of Rs. 36.07 crores voted against the Scheme.

4. That the deponent further craves leave to submit that the instant Scheme of Arrangement, provides for Reduction of Interest on Deep Discount Bond from 13.6974 per cent per annum to 8.5 per cent per annum with effect from 1-4-2002. As such the Scheme appears to be against the interest of Deep Discount Bond holders.

14. I find that the Scheme reducing the interest liability of the Deep Discount Bond from 13.6974 per cent to 8.5 per cent with effect from 1-4-2002 has been accepted by the majority of secured creditors and the Deep Discount Bond holders. There is nothing on record to show that the Scheme of Arrangement is

prejudicial to the interest of the shareholders, creditors or is against the public interest, or violates any of the provisions of the Companies Act or Rules made thereunder.

15. In the facts and circumstances, the Scheme of Arrangement is approved. The Scheme for Arrangement shall come into force with effect from the date specified in the Scheme. The office shall draw formal order on prescribed form within three weeks, which shall be filed by the petitioner before the Registrar of the Companies within the period prescribed for its registration, under the Rules.