
(1974) 11 PAT CK 0007
In the Patna High Court
Case No : Company Petition No. 3 of 1971

Rupak Ltd.

APPELLANT

Vs

Registrar of Companies

RESPONDENT

Date of Decision : 08-11-1974

Acts Referred:

Companies Act, 1956 — Section 100, 155

Citation : (1976) 46 CompCas 53 : (1976) 9 PLJR 319

Hon'ble Judges : Madan Mohan Prasad, J

Bench : Single Bench

Advocate : K.D. Chatterjee and Rameshwar Prasad, No. II, for the Appellant;
Ashwini Kumar Sinha, Standing Counsel to the Central Government, for the Respondent

Final Decision : Dismissed

Judgement

Madan Mohan Prasad, J.—This is an application u/s 155 of the Companies Act, 1956, for rectification of the register of shares of the company on the ground that certain names have been entered therein without sufficient cause.

2. The company, Rupak Ltd., was registered in 1947, under the provisions of the Indian Companies Act, 1913 (hereinafter referred to as "the Act"), having its registered office at Bakerganj in the town of Patna. The authorised capital of this company was Rs. 50,00,000 and its issued capital was Rs. 10,00,000. Out of the issued capital 25,000 ordinary shares were applied and allotted at the rate of Rs. 10 per share to 18 persons mentioned in paragraph 3 of the present application (for the sake of brevity hereinafter referred to as the "Mishra group"). 63,890 ordinary shares were subscribed by persons other than these. The Mishra group filed a money suit in the court of the Subordinate Judge, Patna (Money Suit No. 35 of 1954), for realisation of the sum of Rs. 2,50,000, contending that the money given to the company was a loan and not share money. The suit was decreed and it was held that allotment was not proper as the amount aforesaid was a loan. An appeal was preferred by the company to the High Court (First

Appeal No. 308 of 1958). Meanwhile, a petition for winding up the company was filed by some persons (Company Act Case No. 1 of 1959). A compromise was effected in that case between the parties according to which the company withdrew the appeal and agreed to pay back the money advanced by the aforesaid persons. This compromise arrived at was accepted in the company case by the learned company judge.

3. It is said that up to 30th of November, 1964, the amount of Rs. 2,50,000 aforesaid was shown in the balance-sheet under the heading "Subscribed capital". Including the same in the total amount of Rs. 8,88,900 the balance-sheet showed this amount to be fully called up and an amount of Rs. 28,852.90 as calls in arrears. In view, however, of the compromise order aforesaid, the amount of Rs. 2,50,000 was deducted out of the said subscribed capital and it was shown as Rs. 6,10,047.10 after deducting the calls in arrears. When the balance-sheet and annual return for 1965 were filed before the Registrar of Companies, he objected to the reduction of the capital without compliance with legal requirements. Hence, the present application for rectification of the share register.

4. On behalf of the petitioner it has been urged that the civil court having held the allotment to be not proper and the money advanced by the Mishra group to be a loan and not share money, the inclusion of the names of the Mishra group in the share register from the very beginning was without any good cause and this court may, therefore, order rectification of the register. It has also been contended that the allotment being void ab initio, the share capital cannot be deemed to have been reduced and thus a special resolution in the circumstances of this case was not necessary nor was there any step necessary to be taken under Sections 100 to 103 of the Act.

5. On behalf of the Registrar of Companies it has been said that the company has in fact reduced its share capital and even admitted the fact and this could not be done without taking recourse to a special resolution and complying with the provisions of Sections 100 to 103 of the Act.

6. The questions thus arising are whether in the present case there was a reduction of the share capital and if the company could get the register of shareholders rectified u/s 155 of the Act.

7. It appears that out of the issued capital of Rs. 10,00,000, 25,000 ordinary shares of Rs. 10 each were applied and allotted to the Mishra group. It is not in dispute that according to the decision in the money suit the aforesaid allotment was held to be improper and the share money amounting to Rs. 2,50,000 was held to be a loan and not share money. It has been urged on behalf of the petitioner that the allotment was held to be void. There is nothing to support this argument. The judgment of the said suit has not been brought on record and although in the petition it has been said that the petitioner craves leave to refer to the said judgment no reference was made to it during the course of argument.

It is not known, therefore, whether the civil court held the allotment of shares to be void or voidable. Be that as it may, the fact remains that the said amount of Rs. 2,50,000 was not held to be share money. The effect of this is that it was not a part of the issued capital. In other words, this amount of the issued capital was in a way lost to the company. It is said that the compromise was effected between the parties and the company agreed to pay back the money advanced. This amounts to paying back the amount of Rs. 2,50,000 which was a part of the issued capital.

8. It appears next that in the balance-sheet submitted to the Registrar this amount of Rs. 2,50,000 was shown up to 30th of November, 1964, as subscribed capital. According to the petitioner's case itself, in view of the decision in the money suit and the compromise between the parties, "the said amount was deducted from the total amount of Rs. 8,88,900" (the amount representing 88,890 shares). It was shown in the balance-sheet and annual return for 1965 as follows :

Rs.

88,890 ordinary shares of Rs. 10 each 8,88,900.00

Less calls in arrears 28,852.90

Less creditors declared by court as per term of compromise 2,50,000.00

Total 6,10,047.10

9. It has been contended on behalf of the company that the admission aforesaid was made under a misconception of law. It is not a question of law at all but purely a question of fact and there appears to be little doubt that the company in the manner aforesaid reduced the paid up capital by the sum of Rs. 2,50,000. It seems thus that the company cancelled those shares. It has been stated on behalf of the Registrar that no further allotment of these 25,000 shares to anybody has been reported. In view of the balance-sheet aforesaid it seems obvious that these 25,000 shares have been deemed to be non-existing, at least the amount of Rs. 2,50,000, which was represented to be paid up capital, has been deducted out of the entire paid up capital. There can thus be little doubt that the company has reduced its capital.

10. In this connection it will be relevant to refer to Section 100 of the Act of 1956, which reads as follows :

"100. Special resolution for reduction of share capital.--(1) Subject to confirmation by the court, a company limited by shares or a company limited by guarantee and having a share capital, may, if so authorised by its articles, by special resolution, reduce its share capital in any way; and in particular and without prejudice to the generality of the foregoing power, may--

(a) extinguish or reduce the liability on any of its shares in respect of share capital not paid up ;

(b) either with or without extinguishing or reducing liability on any of its shares, cancel any paid-up share capital which is lost, or is unrepresented by available assets ; or

(c) either with or without extinguishing or reducing liability on any of its shares, pay off any paid-up share capital which is in excess of the wants of the company ;

and may, if and so far as is necessary, alter its memorandum by reducing the amount of its share capital and of its shares accordingly.

(2) A special resolution under this section is in this Act referred to as "resolution for reducing share capital". "

11. It will thus appear that a company may cancel any paid up share capital which is lost or unrepresented by assets or pay off any share capital and it will be a case of reduction of share capital In the present case this share money was held to be a loan and the company paid back the Mishra group and thereafter in the balance-sheet the aforesaid amount was deducted out of the paid up capital. The word "capital" in Section 100 of the Act includes issued capital. In *In re Panruti Industrial Co. (Private) Ltd.*, AIR 1960 Mad 537, 538 the company had passed a special resolution to reduce its share capital. It was observed as follows :

"The word "capital" involved in "reduction in capital" includes nominal share capital, whether issued or unissued and if issued, whether fully paid or not, and "share" includes "stock" so that a company may reduce its stock : See *In re Allsopp and Sons Ltd.* [1903] 51 WR 644. Every reduction of capital must reduce the nominal capital, and a reduction of unissued capital may be combined with a reduction of issued capital, while issued capital may be reduced, whether fully paid or not: *In re Anglo-French Exploration Co.* [1902] 2 Ch 845."

12. I have, therefore, no doubt that in this case the company reduced its share capital.

13. It has been conceded at the Bar that the company did not pass any special resolution for the reduction of its share capital. The present application is not one u/s 101 of the Act. It appears from a letter of the company written to the Registrar (annexure "1" to the counter-affidavit) that the company accepted that "these payments have the effect of reducing the share capital and the Registrar is right in pointing out that provisions of Sections 100 and 104 of the Companies Act, 1956, relating to the reduction of share capital must follow". It did not, however, take steps accordingly. In the subsequent reply by the company the stand taken was that there was no question of reduction of share capital and no steps were necessary in view of the fact that the court had held the allotment of shares to be improper. It must be pointed out in this connection that an appeal had been made by the company against the decree of the trial court but it was only as a result of a compromise that the appeal was withdrawn. In other words, it was the company which as a result of the compromise accepted the position

that the aforesaid amount of Rs. 2,50,000 was not share money but loan and agreed to pay back the same to the Mishra group. In view of the aforesaid considerations the proper procedure for the company would have been to pass a special resolution for the reduction of the share capital in accordance with the provisions, if any, in its articles of association.

14. Mr. Chatterji on behalf of the petitioner placed reliance on two decisions, one in *In re Almada and Tirito Company* [1888] 38 Ch D 415 . In this case a shareholder had filed a petition to rectify the register of the company by striking his name off in respect of certain shares which had been issued to him at a discount, ? 1 share having been issued for 2 shillings only. It was held that the issue of shares was ultra vires and void and the petition was allowed on this ground. The facts of the present case are different. As I have said earlier, nothing has been pointed out to me to show as to why the civil court found the allotment of shares to be improper, nor has anything been said before me to show that I must treat the allotment to be void on that account. It was held in that case that there was no power to limit the liability of the shareholders to pay the amount unpaid on their shares. The other decision on which he placed reliance is in *In re Portuguese Consolidated Copper Mines Ltd.* [1889] 42 Ch D 160 In that case allotment of shares had been made by the directors when there was no quorum and due notice of the meeting of the board of directors had not been given to all the directors. The facts there also were different from the present one.

15. Learned counsel for the Registrar has placed reliance on several decisions. None of them is, however, on all fours with the circumstances of the present case. The first one is in the case of *Homi Cawasji Bharucha v. Arjun Prasad* [1957] 27 Comp Cas 6 In this case there was a scheme of reconstruction resulting in the reduction of share capital. The question at issue was whether Section 55 of the Act of 1913 was overridden by the special provisions of Section 153. It was held that it did not and in a reduction of share capital, the special formalities "prescribed must also be complied with. Another decision referred to is in the case of *Hindusthan Commercial Bank Ltd. v. Hindusthan General Electrical Corporation Ltd.* [1960] 30 Comp Cas 367 This was also a case of a scheme of arrangement involving reduction of capital. In the case of *Bengal Bank Ltd. v. Suresh Chakravathy*, [1951] 21 Comp Cas 315 also the scheme contemplated a reduction of the share capital and it was held that a scheme involving reduction of capital must be carried in accordance with the statutory provisions relating to reduction.

16. Counsel for the parties have not been able to cite any decision which would be applicable to the circumstances of the present case. Mr. Chatterji contended that since the allotment of shares was held to be improper by an order of court, it did not involve any reduction of the capital. No decision has been cited in support of this proposition. I must point out again that it is not precise to say in the circumstances of the present case that it was by virtue of the decree passed in the money suit that the capital was reduced. As pointed out by me earlier, the

company withdrew the appeal against that decree because of a compromise it had entered into with the Mishra group. As pointed out earlier, there was a petition by another person for winding up of the company and the compromise arrived at was recorded in that company case. As a result of it, the appeal was not prosecuted. It was, therefore, the compromise which led to the reduction of the share capital on account of the return of the amount of Rs. 2,50,000 to the Mishra group. A compromise between the company and the creditor involving a reduction of share capital would also come within the mischief of Section 100. The company could do this only in accordance with the formalities of law prescribed.

17. In the result, I hold that the present application for rectification of the register of members cannot succeed. It is accordingly dismissed. The company shall pay a cost of Rs. 100 to the Registrar of Companies.