IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CP No.201 of 2014 (O&M)
Date of Decision: 12.05.2015

In the matter of Sections 100 to 104 of the Companies Act, 1956

And

In the matter of MBM limited, a company incorporated under the provisions of Companies Act, 1956 and having its registered office at A-33, Ph.-VIII, EETP, Compley Indus. Area, Mohali, Punjab-160051.

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

1. Whether reporters of local newspapers may be allowed to see judgment?
2. To be referred to reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr. Atul V. Sood, Advocate
for the petitioner.

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AMIT RAWAL, J. (Oral)

In this petition filed under Sections 100- 104 of the Companies Act, 1956 (for short, 'the Act'), duly supported by affidavit, the petitioner-Company seeks confirmation of reduction of share capital.

It is stated by the learned counsel for the petitioner company that the petitioner company is registered under the Act and its registered office is situated at Mohali (Punjab), within jurisdiction of this Court.

The main objects of the petitioner company are detailed in Memorandum and Articles of Association annexed with the petition at Annexure P-1.

Learned counsel for the petitioner submitted that the petitioner company had incurred huge losses and became a sick company. The order for its winding up was passed by this Court on 20.2.1997 in CP No. 21-A of 1997 on the recommendation of BIFR. In the year 2007, under the scheme of revival, the winding up order was recalled vide order dated 29.5.2008. The company has concentrated on revival as per the scheme approved by this Court, vide project report Annexure P-3. The petitioner company is exploring various proposals for revival of the company. Article 57 of the Articles of Association of petitioner company authorises it to reduce its share capital in any manner.

The authorised share capital of the petitioner company as on 31.3.2013, was ₹10,00,00,000/- consisting of 1,00,00,000 equity shares of ₹10/- each. It's issued share capital was ₹5,22,02,200/- consisting of 52,20,220 equity shares of ₹10/- each. The subscribed and fully paid-up share capital of the company was ₹5,21,74,200/- consisting of 52,17,420 equity shares of ₹10/- each fully paid-up, less allotment money of ₹44,000/-in arrears. The same was the position on the date of filing of the petition. It is further stated that the company has accumulated losses of ₹9,74,64,867/- as on 31.3.2013.

It has further been mentioned that the number of shares shall be increased from 1,00,00,000 to 10,00,00,000 and the face value per share shall be reduced from ₹10/- per share to ₹1/- per share.

As averred in the petition in para 14, after reduction, the proposed restructuring of capital in the books of accounts of the company shall be reflected in the following manners:-

Particulars	As on date of filing of petition (Pre reduction of capital)	Post reduction of share capital
I Authorised share capital a) Number of equity shares b) Amount	1,00,00,000 shares of ₹10/- each. ₹10,00,00,000/-	10,00,00,000 shares of ₹ 1/- each ₹10,00,00,000/-
II. Issued Share capital a) Number of shares b) Amount	52,20,200 of ₹10/- each. ₹5,22,02,200/-	52,20,220 of ₹1/- each ₹52,20,220/-
II. Subscribed and paid up capital a) Number of shares b) Amount	52,17,420 of ₹10/- each. ₹5,21,74,200/-	52,17,420 of ₹1/- each. ₹52,17,420/-

The accumulated losses of the petitioner company after the proposed reduction of share capital shall be reflected in the books of accounts of the company in the following manner:-

Particulars	Post Reduction (in ₹)
Accumulated Losses as on 31.03.2013	9,74,64,867/-
The aforesaid accumulated losses shall be reduced by cancelling the subscribed and paid-up equity share capital, which is lost, from ₹10/- to ₹ 1/-.	4,69,56,780/-
Accumulated losses being carried forward	5,05,08,087/-

The reasons for reduction in share capital of the company as given in the petition are extracted below:-

> “(a)The petitioner company has been non-operational from last many years and the accumulated losses have fully eroded the Company's paid-up share capital, due to which the Petitioner Company has been suffering commercially and its creditworthiness market standing, reputation and goodwill are severally affected. Therefore, the Petitioner Company is not able to start any operation / business unless it is financially restructured and its balance sheet is cleaned up by

writing off the accumulated losses against the reduction in share capital to the extent available.

(b) These accumulated losses have an adverse effect on the Petitioner Company's financial position as reflected in its balance sheet and has also been proving to be an obstacle for starting any operation/ business since it creates a negative image of the Petitioner Company in the minds of bankers and others.

(c) With a view to bringing about the balance sheet of the Petitioner Company consistent with the true financial position and doing away with the misleading picture shown by it concerning the subscribed and paid-up equity share capital which has been lost due to accumulated losses, the Board of Directors of the Company has decided to reduce the Petitioner Company's subscribed and paid-up equity share capital to Rs. 52,17,420/- and resulting in a reserve of Rs. 4,69,56,780/- to be adjusted against the accumulated loss of Rs. 9,74,64,867/- as appearing in the Balance Sheet dated 31st March, 2013, after the reduction is confirmed by the Hon'ble High Court of Punjab & Haryana at Chandigarh under section 101 of the Act, and write off the losses to that extent."

It has been pleaded that as on 30.11.2014 there is no secured creditor of the petitioner company. It has three unsecured creditors. Certificate in this regard issued by M/s S. K. Bajpai & Company, Chartered Accountants, is annexed as Annexure P-7. The unsecured creditors have given their consent for reduction of equity share capital vide Annexure P-8.

The shares of the petitioner company are listed on Ludhiana Stock Exchange Limited and Delhi Stock Exchange Limited. It has further been stated that as required under Clause 24 (f) of the Listing Agreement and SEBI Circular, the petitioner company had filed the Scheme along with necessary documents, and has received observation letter/ no objection certificates of SEBI, Annexure P-9 (colly). The shareholders in the Annual General Meeting held on 30.9.2014, vide special resolution (Annexures P-11 and P-12), resolved to reduce the equity, subscribed and fully paid-up share capital by 90%. It was prayed that since all the unsecured creditors have given consent for reduction of equity share capital vide Annexure P-8, convening of their meeting may be dispensed with.

Learned counsel for the petitioner company further submitted that the proposed reduction in share capital does not involve any financial outgo on the part of the petitioner company and is only in the nature of a book entry. The reduction of share capital does not involve reduction of any liability in respect of unpaid capital or the payment to any shareholder of any paid up capital. The prayer is that the procedure under Section 101 (2) of the Act does not apply to the proposed reduction and the same be dispensed with.

There is no secured creditor of the petitioner company as has been certified by M/s S. K. Bajpai & Company, Chartered Accountants vide Annexure P-7. All the unsecured creditors have given their consent for reduction of equity share capital vide Annexure P-8.

Since the shares of the petitioner company are listed on Ludhiana Stock Exchange Limited and Delhi Stock Exchange Limited, as required under Clause 24 (f) of the Listing Agreement and SEBI Circular, the petitioner company had obtained observation letter/ no objection certificates of SEBI.

Vide special resolution (Annexure P-11), the shareholders had also resolved to reduce the equity, subscribed and fully paid-up share capital by 90%.

Notice of this petition was issued to the Official Liquidator and was also ordered to be published in the newspapers namely "The Indian Express" (English), "Dainik Tribune" (Hindi) and as well as Official Gazette of State of Punjab. Affidavit of publication has been filed in the Court whereby publication caused in the "Indian Express" and Dainik Tribune has been attached and as well as slips depositing statutory expenses for causing Gazette Notification in the State of Haryana has been annexed. However, exemption has been sought by invoking Rule 24 and 74 of the Company (Court) Rules 1959 for causing publication in the Official Gazette.

I have heard learned counsel for the petitioner and gone through the provision of Sub Rule 2 of Rule 24 and Rule 74 of Companies (Court) Rules, 1959.

As per Rule 74, it is not mandatory to cause publication in the Official Gazette. Even as per Sub-Rule 2 of Rule 24, the Court has discretion to dispense with the advertisement, except in the case of winding up. Hence, the petitioner-company is exempted from making publication in the Official Gazette of State of Punjab.

Official Liquidator has submitted his report dated 12.05.2015 in the Court and in paras 13 the Official Liquidator has observed as under:-

> *"13. As per Auditors report 30.05.2014 the following observation has being noticed.*
>
> *1. The management has not physically verified fixed assets during the year covered under audit. Therefore we are not in a position to comment on the discrepancy which could have been noticed during the year.*
>
> *2. The company had taken interest free unsecured loan in the shape of advance from a company covered in the register maintained under Section 301 of the Companies Act, 1956. The maximum amount involved in such transaction at any time during the year covered under review was of Rs.5.30 Crores. Further, Board has proposed to settle the liability by sale of assets subject to certain approvals.*
>
> *3. The accumulated losses of the company at the balance sheet dated is Rs.101,683,006/- more than its*

> *net worth of Rs.53,677,620/-. The company has suffered cash losses of Rs.25,47,448/- in the current year as against cash loss of Rs.22,19,758/- in the immediate preceding year ended."*

In view of the observations of the Official Liquidator, it appears that Company has already proposed to settle the liability by sale of assets subject to certain approvals and the accumulated losses of the company are more than its net worth. Thus, in essence the Liquidator has not objected to the proposal of the petition for reduction of the share capital.

Vide resolution, Annexure P-6, the Board of Directors of the company in the meeting held on 24.10.2013, unanimously decided that subject to approval from this Court, the existing issued, subscribed and fully paid-up equity share capital be reduced by 90% by cancelling the issued, subscribed and fully paid-up equity share capital in the following manners:-

> "The issued Equity Share Capital of the Petitioner Company shall stand reduced from Rs. 5,22,02,200/- (Rupees Five Crores Twenty Two Lakh Two Thousand Two Hundred) divided into 52,20,200/- (Fifty Two Lakh Twenty Thousand Two Hundred) equity shares of face value of Rs. 10/- (Rupees Ten) each to Rs. 52,20,220/- (Rupees Fifty Two Lakh Twenty Thousand Two Hundred

and Twenty) divided into 52,20,220/- (Fifty Two Lakh Twenty Thousand Two Hundred and Twenty) equity shares of face value of Re. 1/- (Rupee One) each. The Subscribed and Fully Paid-up Equity Share Capital of the Petitioner Company shall stand reduced from Rs.5,21,74,200/- (Rupees Five Crores Twenty One Lakh Seventy Four Thousand Two Hundred) divided into 52,17,420/- (Fifty Two Lakh Seventeen Thousand Four Hundred and Twenty) equity shares of face value of Rs.10/- (Rupees Ten) each fully paid up to Rs. 52,17,420/- (Rupees Fifty Two Lakh Seventeen Thousand Four Hundred and Twenty) divided into 52,17,420/- (Fifty Two Lakh Seventeen Thousand and Twenty) equity shares of face value of Re. 1/- (Rupee One) each.

Further, the Reserves of Rs. 4,69,56,780/- arising on cancellation of the aforesaid paid-up share capital shall be adjusted against the debit balance of Rs.9,74,64,867/- as on 31.3.2013, being the accumulated losses."

For the aforementioned reasons, reduction of share capital, which the petitioner-company has resolved vide Resolution dated 30.09.2014 (Annexures P-11 & P-12) passed in the meeting of Shareholders and in the Annual General Meeting is confirmed and approved, however subject to filing of the minutes under Sections

103(i) (b) of the Companies Act, 1956.

On filing of the aforementioned form of minutes with Registry the same be taken on record and a formal order be prepared, and the petitioner-company shall deliver to the Registrar of Companies a certified copy of the same including the minutes as approved within a period of four weeks from the date of obtaining the certified copy.

The notice of the registration of this order and the minutes as approved by this Court shall be published in the 'Indian Express (English) & 'Dainik Tribune (Hindi)' within two weeks from the date of receipt of certified copy of the registration from the Registrar of Companies.

The petition stands disposed of in the above terms.

12.05.2015 **(AMIT RAWAL)**
pawan **JUDGE**