IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY APPEAL (L) NO.18 of 2015
IN
COMPANY PETITION NO.17 OF 2013

HMG Industries Limited … Appellant
Versus
3A, Capital Services Limited And Others ... Respondents

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Mrs. Anita Castellino a/w Mr. Vikash Singh, Ms. Akshata Naik i/b Lambay And Co., for the Appellant.
Mr. Rajeev Panday, Mr. Dharma Raj i/b PRS Legal for Respondent No.1.

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CORAM : S.C.GUPTE, J.

DATE : 23 DECEMBER 2016.

P.C. :

. Heard learned Counsel for the parties.

2 This appeal challenges an order passed by the Company Law Board, Mumbai Bench ("CLB") on the petition of Respondent No.1 under Section 111A(2) of the Companies Act, 1956 ("the Act"). Respondent No.1 claims to be a transferee of 5,00,000 preference shares of the face value of Rs.100/- of the Appellant-company, held by Respondent No.2 herein. Respondent No.2 transferred these shares to Respondent No.1 for a consideration. After acquisition of the subject shares, Respondent No.1 lodged the same alongwith duly executed transfer deed with the Appellant-company for registering the transfer in accordance with law. The Appellant

raised objections to the registration of the transfer and refused to register the same. Respondent No.1, thereafter, approached the CLB by way of the captioned petition. By its impugned order, the CLB allowed the petition and directed the Appellant to transfer 5,00,000 cumulative redeemable preference shares forming the subject matter of the petition in favour of Respondent No.1 and rectify its register of members accordingly.

3 Learned Counsel for the Appellant submits that the impugned order of the CLB is vitiated by an error of law. She submits that in pursuance of a scheme of compromise between the company, its members and creditors, Respondent No.2 agreed to accept the sum of Rs.350 Lacs in lieu of the preference shares held by it. Learned Counsel submits that this amounts to redemption of the shares and conversion of the share capital into a corporate debt in the sum of the agreed amount. She submits that the only right Respondent No.1 had after such conversion was to accept the amount of Rs.350 Lacs as per the scheme and the transferability of the shares was extinguished as per Section 80 of the Act. There is no merit in this contention. The scheme of arrangement sanctioned by this Court records a compromise on the part of the preference shareholders which requires Respondent No.2 to agree to waive dividend payable upto the date of the scheme and to accept payment of 70 % of the principal amount outstanding in respect of redemption of these shares, i.e. Rs.350 Lacs over a period of 10 years without any dividend. This is a compromise between the Appellant-company and the preference shareholders of the Appellant-company. There is nothing to suggest that the compromise amounts to redemption of the preference shares or conversion of the amount due thereon (or any other reduced amount) into a corporate debt. Respondent

No.2, even after the sanction of the scheme, continues to be a preference shareholder with agreement to accept 70% of the face value of the redeemable preference shares over a period of 10 years without any dividend. There is no question of any redemption of shares or conversion into a corporate debt or extinguishment of transferability of the preference shares as a result.

4 Learned Counsel for the Appellant further submits that Respondent No.2 did not appear in the proceedings. She submits that Respondent No.2 has transferred the subject shares to Respondent No.1 in contravention of law including breach of RBI guidelines. Nothing is pointed out as to what particular contravention is committed by Respondent No.2 in transferring the shares. There is no merit in this contention accordingly.

5 Learned Counsel further submits that the shares of the face value of Rs.100/- of 5,00,000 preference shares of the Appellant-company have been transferred by Respondent No.2 to Respondent No.1 at a price of Rs.5,000/- and that the value of the shares has thereby been severely undermined by Respondent No.2. The value of the shares is a matter between the transferor and transferee. The Company can hardly be concerned with the same. In any event, such value is not binding on the Company. There is, accordingly, no merit in this contention also.

6 The company appeal is, in the premises, dismissed.

7 No order as to costs.

(S.C.GUPTE, J.)