

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on: 09.12.2016
Judgment pronounced on: 08.03.2017

CO.PET. 413/2016

IN THE MATTER OF:-

ONCQUEST LABORATORIES LIMITED

... Petitioner

Through: Meenakshi Singh &
Rohan Malik, Advocates
for the Petitioner, Ms.
Aparna Mudiam, Assistant
ROC

CORAM:
HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

J U D G M E N T

SIDDHARTH MRIDUL, J.

1. The present petition under Sections 100 to 104 of the Companies Act, 1956 (hereinafter referred to as 'the Act') by Oncquest Laboratories Limited (hereinafter referred to as 'Petitioner Company') seeking sanction of this court for the proposed reduction of its share capital.
2. The registered office of the Petitioner Company is situated at New Delhi, within the jurisdiction of this Court.
3. The Petitioner Company was incorporated as a Private Limited Company under the Act, vide Certificate of Incorporation dated 29.11.2007,

issued by the Registrar of Companies, N.C.T. of Delhi & Haryana. Subsequently, the Petitioner Company converted itself from a Private Limited Company to a Public Limited Company and obtained a fresh certificate of incorporation dated 16.01.2008, in this behalf, issued by the Registrar of Company N.C.T. of Delhi & Haryana.

4. The authorised share capital of the Petitioner Company, as on 31.03.2015, is Rs.38,00,00,000/- divided into 3,80,00,000 equity shares of Re. 10/- each. The issued, subscribed and paid up share capital of the Petitioner Company, as on 31.03.2015, is Rs.36,78,00,000/- divided into 3,67,80,000 equity shares of Rs.10/- each.

5. Copies of the Memorandum of Association and Articles of Association of the Petitioner Company have been filed and the same are on record. The audited balance sheet, as on 31.03.2015, of the Petitioner Company, along with the report of the auditor has also been enclosed with the petition.

6. It has been stated by learned counsel appearing on behalf of the Petitioner Company that the circumstances which justify and/or necessitate the proposed reduction of capital are, *inter alia*, as follows:

“a. The Company had suffered heavy losses in the past. As on 31st March, 2015, it has accumulated losses to the tune of Rs. 22,60,75,000 as against the total paid share capital of Rs. 36,78,00,000.

b. The Management has initiated several steps towards long term survival and growth of the Company. The Management is also exploring possibilities. of infusion of funds in the Company through capital investments and borrowings. However, the Company is finding it very difficult to invite any new investments or borrowings with such substantial accumulated losses. Hence, the Board of Directors is of the opinion that the Balance Sheet of the Company should be cleaned up to the best possible extent. It is, however, not possible to wipe off these losses in normal course.

Accordingly, the Board of Directors is proposing a reduction of capital for writing off the substantial part of accumulated losses. It is proposed to be reduced from Rs. 36,78,00,000 (Rupees Thirty Six Crore Seventy Eight Lacs only) comprising 3,67,80,000 (Three Crores Sixty Seven Lacs Eighty Thousand) equity shares of Rs.10/- each to Rs.14,17,25,000 (Rupees Fourteen Crores Seventeen Lacs Twenty Five Thousand only) comprising of 1,41,72,500 (One Crores Forty One Lac Seventy Two Thousand Five Hundred) equity shares of Rs.10/- each." resulting into a total reduction of Rs. 22,60,75,000 and writing off the debit balance of the Profit & Loss Account of the Company by an equivalent amount.

c. The management of the Company is of the opinion that the proposed reduction of share capital will be in the best interest of the Company and all its stakeholders.

d. It is considered prudent by the Board of Directors of the petitioner company to reduce the share capital which has been irretrievably lost and think upon new ventures with set off of accumulated losses against capital."

7. It has been further stated in the present petition that Article 9 of the Articles of Association of the Petitioner Company authorizes the Petitioner Company to reduce its share capital. The said Article 9 of the Articles of Association of the Petitioner Company reads as follows:

"The Company may (subject to provisions of Section 78, 80, 100 to 105 of the Act) from time to time by Special Resolution, reduce its Capital and Capital Redemption Reserve Account and share Premium Account in any manner for the time being authorized by law, and in particulars, Capital; may be paid off on the footing that it may be called up again or otherwise."

8. The Board of Directors of the Petitioner Company in its meeting held on 29.01.2016 has unanimously approved the proposed reduction of the share capital of the Petitioner Company. A copy of the said resolution passed at the meeting of the Board of Directors of the Petitioner Company proposing the reduction of share capital has been placed on record.

9. Further, it is noted that a special resolution has been passed at the Extra Ordinary General Meeting of the members of the Petitioner Company held on 26.02.2016, approving the proposed reduction of share capital of the Petitioner Company. A copy of the special resolution of the petitioner company passed at the EGM of the shareholders of the petitioner company qua the reduction of share capital held on 26.02.2016 has been filed and the same is on record.

10. In the aforesaid background, the present petition has been filed seeking approval to the proposed reduction of share capital and in order to get the proposed minutes, extracted hereunder and annexed with the present petition, registered under Section 103(1)(b) of the Act. The Form of minutes

proposed to be registered under Section 103(1)(b) of the Act reads as follows:

"The paid up capital of Super Hoze Industries Pvt. Ltd. is henceforth Rs. 14,17,25,000 (Rupees Fourteen Crores Seventeen Lacs Twenty Five Thousand only) divided into 1,41,72,500 (One Crore Forty One Lacs Seventy Two Thousand Five Hundred) equity shares of Re. 10 (Rupees Ten) each, reduced from Rs.36,78,00,000/(Rupees Thirty Six Crores Seventy Eight Lacs only) comprising 3,67,80,000 (Three Crores Sixty Seven Lacs Eighty Thousand) equity shares of Rs.10/- each."

11. Notice was issued in the present petition to the Regional Director, Northern Region, Ministry of Corporate Affairs, vide order dated 13.05.2016. Notice was accepted by Ms. Aparna Mudium, Assistant Registrar of Companies on behalf of the Regional Director. Further, vide said order dated 13.05.2016, citations were directed to be published in the newspapers, namely, 'The Statesman' (English) and 'Jansatta' (Hindi). Affidavit dated 02.12.2016 has been filed by the Petitioner Company showing compliance regarding publication of notice and publication of citations in the aforesaid newspapers on 26.07.2016.

12. In response to the notice issued in the present petition the Regional Director, Northern Region, Ministry of Corporate Affairs has filed an affidavit dated 02.12.2016 stating that they do not have any objection to the proposed reduction of share capital.

13. No objection has been received to the proposed scheme from any party. The Petitioner Company by way of affidavit dated 02.12.2016 has stated that pursuant to publication of citations in the newspapers on 26.07.2016 no objection has been received to the proposed reduction of share capital.

14. In view of the foregoing and there being no objection from any creditor or any member of public to the proposed scheme, the present petition is hereby allowed. The resolution dated 29.01.2016 passed by the Board of Directors; and the said resolution dated 26.02.2016 passed by the members, of the Petitioner Company for reduction of its share capital in order to write off the debit balance of the Profit & Loss Account of the Petitioner Company by an equivalent amount is hereby approved. The 'Form of Minutes' proposed to be registered under Section 103(1)(b) and annexed to the present petition, is also approved.

15. A certified copy of this order be delivered to the Registrar of Companies within thirty days from today. The Registrar of Companies, on receipt of the certified copy of this order and minutes approved by this Court, is directed to register the same and effect the necessary alteration with regard to the company.

16. The notice of registration of this order and the resolution of the Petitioner Company shall be published in the Delhi edition of the

newspapers, namely, 'The Statesman' (English) and 'Jansatta' (Hindi) within 14 days of the registration as aforesaid.

17. The formality of adding the words 'AND REDUCED' to the name of the company is dispensed with.

18. The Petitioner Company shall deposit a sum of Rs.50,000/- by way of costs, in the Delhi High Court Bar Association Lawyers Social Security and Welfare Fund, New Delhi, within a period of two weeks from today.

19. Consequently, the petition is allowed in the aforesaid terms and is accordingly disposed of.

MARCH 08, 2017
Ap/sb/mk

SIDDHARTH MRIDUL, J