Appellant Vs. Respondent

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Court : Kolkata

Decided On : Jan-08-2014

Judge : Sanjib Banerjee

Appellant : Appellant

Respondent : Respondent

Judgement :

CA No.511 of 2013 In the High Court at Calcutta Original Jurisdiction In the matter of: ITC Limited BEFORE: The Honble JUSTICE Sanjib Banerjee Date: 8th January, 2014 Appearance: Mr.S.N.

Mookerji, Sr.Adv.Mr.Ratnanko Bnaerji, Adv.Mr.D.N.

Sharma, Adv.The Court: That resolution for approval of the Scheme of Arrangement between Wimco Limited and the Applicant Company namely ITC Limited (hereinafter referred to as the Resulting Company) and their respective Shareholders shall be put to the Ordinary Shareholders of the Resulting Company for their consideration and, if thought fit, approval, by postal ballot/ e-voting and such resolution, if passed by a majority in number representing three-fourths in value of the Ordinary Shareholders casting their votes by such postal ballot/evoting, shall be deemed to have been duly passed at a meeting of such shareholders under Section 391(1) of the said Act.

That the postal ballot shall be conducted in the manner prescribed by the Companies (passing of the resolution by postal ballot) Rules, 2011 (Postal Ballot Rules).As an alternative to voting physically by postal ballot, e-voting option shall also be given to the Ordinary Shareholders of the Resulting Company as provided in the said rules.

E-voting facility shall be provided on the electronic platform of the National Securities Depository Limited, an agency approved by the Ministry of Corporate Affairs in terms of the Postal Ballot Rules as arranged by the Resulting Company.

Accordingly, the procedure recommended by such agency for such e-voting shall be followed.

That Mr.Rupak Ghosh, Advocate, shall act as the Scrutinizer for conducting the postal ballot at a remuneration of 3000 GM.

That notice of the resolution by postal ballot / e-voting together with a copy of the said Scheme, a copy of the Statement under Section 393 of the Companies Act, 1956 and other documents accompanying the same, including postal ballot form, shall be sent to each of the said Ordinary Shareholders of the Resulting Company.

Such notices shall be sent by e-mail to all the shareholders who have provided their e-mail Ids and consented to receiving documents by e-mail from the Resulting Company.

Such notices shall be sent by ordinary post or book post to all the other Ordinary Shareholders of the Resulting Company.

The notices shall be sent to the Ordinary Shareholders at their respective or last known addresses/email Ids, as aforesaid.

That the notice shall specify a date which is not less than 30 days from the date of completion of despatch of the notices as the last date by which the votes have to be tendered as aforesaid.

That, in addition to the notice, an advertisement of the resolution by postal ballot / e-voting giving details as required under the Postal Ballot Rules and stating that copies of the said notice and documents accompanying the same can be obtained free of charge at the registered office of the Resulting Company be inserted once each in "The Financial Express, English newspaper and "Bartaman, Bengali newspaper in Kolkata.

The publication in the Kolkata Gazette is dispensed with.

That Advocates-on-Record for the Applicant Company do within 7 days from this day file in Court the statement under Section 393 of the Companies Act, 1956 and the same shall be settled by the Assistant Registrar (Company) of this Court.

That the Scrutinizer appointed for the postal ballot/ e-voting or any person authorised by him do issue and send out the notices referred to above.

That voting by proxy shall not be permitted since no physical meeting is convened.

It is however clarified that corporate and institutional shareholders shall be entitled to vote through their authorised representative with proof of their authorisation as prescribed under the said Postal Ballot Rules and procedure prescribed for e-voting.

That the value of each member shall be in accordance with the books of the Resulting Company and, where entries in the books are disputed, the Scrutinizer shall determine the value for the purpose of the postal ballot/e-voting.

That the Scrutinizer shall declare the results of the postal ballot/ evoting within a period of two weeks from the end of the last date of voting specified in the notice.

The minutes shall be prepared and signed by the Scrutinizer.

The declaration shall be posted on the notice board of the Resulting Company at its registered office as also on the website of the Resulting Company.

The Scrutinizer shall also report to this Court the results of the said postal ballot/e-voting within the said period and his report shall be verified by his affidavit.

Summons be signed as of date.

C.A.No.511 of 2013 is thus disposed of without any order as to costs.

Urgent certified website copies of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

(Sanjib Banerjee, J.) bp.