

In Re: Tata Realty and Infrastructure Ltd.

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Court : Mumbai

Decided On : Jan-09-2009

Reported in : [2009]149CompCas117(Bom); [2010]97SCL315(Bom)

Judge : S.J. Vazifdar, J.

Acts : [Companies Act, 1956](#) - Sections 78 and 100 to 105

Appeal No. : C.A. No. 14 of 2009 with C.P. No. 5 of 2009

Appellant : In Re: Tata Realty and Infrastructure Ltd.

Advocate for Pet/Ap. : D.J. Khambata, Adv., i/b., and; Doijode Associates

Judgement :

S.J. Vazifdar, J.

1. I have today passed an order dispensing with the procedure under Section 101(2) of the [Companies Act, 1956](#). This is in view of the averments made in the affidavit-in-support of the company petition and in a further affidavit dated December 19, 2008, inter alia, to the effect that the creditors of the company are of the value of about of Rs. 127 crores; creditors of an aggregate value of about 99.38 per cent, have given their consent and that subsequently the remaining creditors have been paid and/or have also given their consent.

2. The company registrar has invited my attention to an order of a learned single judge of this Court dated December 19, 2008, in Company Petition No. 1067 of 2008 connected with Company Application No. 1680 of 2008 (India Value Fund Advisors P. Ltd., In re [2009] 149 Comp Cas 115), which is similar to the present application. The learned judge called for a certificate from qualified auditors/chartered accountants empanelled with the Registrar of Companies/Regional Director on the question as to whether the proposed reduction therein does or does not involve diminution of liability and is not prejudicial to the interests of the creditors/public in general. The learned judge observed that depending on the opinion expressed in such report, appropriate orders would be passed in that matter. It was further observed that this course would not only subserve the interests of the creditors/public in general but also facilitate the court in taking an informed decision. The learned judge therefore issued notice to the Government of India, through the Regional Director (Western Region). The Regional Director was directed to take such measures as required for issuance of the certificate in consultation with the appropriate authorities and to submit a certificate to the company registrar.

3. I do not read the order to hold the above procedure to be mandatory in every matter. It is quite obvious that the learned judge passed that order as he was of the opinion that in the facts of that case the procedure was so required. The company court is always entitled to satisfy itself regarding the merits of the application and for that purpose to seek such assistance as may be required including as directed in the above matter.

4. The provisions of the [Companies Act, 1956](#), including Sections 78 and 100 - 105 do not make a recourse to such a procedure mandatory. It is not necessary for the company court to pass such directions or follow the said procedure in every such matter. The reports such as the one called for are only an aid to the company court and are not mandatory in every case.

5. The interests of the public in general or of the creditors in particular cannot possibly be affected by not following such a procedure. There are adequate safeguards in the Companies Act to protect their rights. For instance, in any event

it is the duty of the company court to secure the creditors and to pass necessary directions. Moreover, the creditors always have the right to oppose the application.

6. In the present matter I am satisfied that the company is entitled to the orders sought without taking recourse to the said procedure and I have accordingly signed the order.

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