

In Re: Pasupati Acrylon Ltd.

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Court : Allahabad

Decided On : Jan-17-2006

Reported in : (2006)2CompLJ462(All); [2006]72SCL408(All)

Judge : Sunil Ambwani, J.

Acts : [Companies Act, 1956](#) - Sections 81(1A), 101, 103(1) and 189; Substantial Acquisition of Shares and Takeovers Regulations, 1997

Appeal No. : Company Petition No. 35 of 2005

Appellant : In Re: Pasupati Acrylon Ltd.

Advocate for Pet/Ap. : R.P. Agarwal, Adv.

Judgement :

Sunil Ambwani, J.

1. Heard Shri R.P. Agarwal, learned Counsel for the petitioner.
2. This petition under Section 101 of the [Companies Act, 1956](#) seeks confirmation of proposed reduction of equity share capital.
3. The petitioner company is doing business of manufacture of acrylic staple fibre. The board of directors of the company, in terms of Article 75 of its articles of association have resolved on 29.7.2005, that subject to sanction by High Court,

the paid-up equity capital be reduced by 10 per cent in a manner that the face/nominal value of equity share shall remain at Rs. 10 each, but the number of paid-up equity shares shall be reduced from the existing 6,34,81,2-46 No. to 5,71,33,121 No. of Rs. 10 each and, accordingly, the number of shares held by each shareholder shall stand reduced by 10 per cent

4. The petitioner states that on account of cash losses suffered by it due to various reasons and its inability to service its debts, it had approached the financial institutions and banks (joint lenders), for restructuring their debts under the corporate debt restructuring mechanism. The restructuring has been approved by the joint lenders, vide CDR Cell approval letter No. BY CDR No. 1347-tlated 15.12.2004. As per the terms of the said approval letter, the petitioner is required to reduce (de-rate) its equity share capital by 10 per cent. The proposed reduction in the equity capital and the present company petition seeking confirmation are meant to meet the above requirement of the financial institutions/ banks.

5. The petitioner has further stated that the proposed reduction of capital has been approved by the shareholders of the company by special resolution duly passed in accordance with Section 189 of the [Companies Act, 1956](#) at the annual general meeting held on 29.9.2005 after due notice as provided in the notices sent to the shareholders. The special resolution passed at the AGM on 29.9.2005 have been annexed to the petition.

6. The Court, by order dated 17.11.2005 directed the petitioner to clarify whether the creditors whose interest liability is to be reduced under the debt restructuring scheme approved by the CDR Cell, have approved the implementation of the debt restructuring package and the reasons as to why the increase of promoter's stake has been made a condition precedent to the restructuring package.

7. The petitioner filed a detailed affidavit annexing thereto copies of the approval letters of the secured creditors who have agreed to reduce the interest liability and explained the reasons as to why the increase in promoters stake has been made a condition precedent to the said package. The court recorded it in the order dated 1,12.2005, as follows:

The queries raised by the court, namely, whether the creditors whose interest liability is to be reduced, have approved the implementation of the debt, and the reasons as to why the increase of promoter's stake has been made a condition precedent to the restricting package, have been satisfactorily explained in paragraphs 3 and 4 of the supplementary affidavit of Shri Rakesh Mundra.

It is contended that except UTI and PICUP EFS/ECS which have an exposure of Rs. 418.37 lakhs out of total of Rs. 11,299.20 lakhs which comes to only 3.70 per cent., and which are not covered by CDR package the CDR package has been accepted by all other secured creditors. The approval given by the CDR member have been annexed to the supplementary affidavit.

With regard to increase of promoters' stake in shares, it is stated that the conversion of promoters contribution of Rs. 14 crore into equity share capital after de-rating (deduction) will be as contemplated under condition 3 of the restructuring package, it is regulated by Section 81(1 A) of the [Companies Act, 1956](#), SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997, and Chapter XIII of SEBI (Disclosure and Investor Protection) Guidelines, 2000. The pricing of the shares shall be done strictly in accordance with Clause 13.1.1.1 of Chapter XIII of SEBI (Disclosure and Investor Protection) Guidelines, 2000. The proposed conversion is on the condition of the entire preference share so subscribed shall be offered as security by way of pledge of shares thereby increasing the value of pledged shares from 1.25 crore to 15.25 crore, with voting power, and this will increase the voting power in the hands of financial institutions, to almost 21 per cent of the total voting strength. It is further explained that the condition of conversion of unsecured loan of promoters into equity shares has been incorporated by the security and to safeguard their interest.

Let this petition for reduction of share capital under Section 101 of the Companies Act, be advertised in Times of India (English) published from Delhi, Bombay and Lucknow, and Amar Ujala (Hindi) published from Delhi and Lucknow fixing 17.1.2006. Steps be taken within a week.

1.12.2005

8. The petitioner has filed affidavit dated 8.1.2006 annexing copies of all the aforesaid editions of the two newspapers in proof of due publication of notices of the petition. The citation has been published in Times of India published from Bombay, Delhi and Lucknow on 13.12.2005 and Amar Ujala published from Delhi and Kanpur on 20.12.2005.

9. No one has filed any objections to the proposed reduction of capital.

10. After hearing the learned counsel and upon perusal of the record, the court is satisfied that the proposed reduction of capital of petitioner company deserves to be confirmed. Accordingly, the reduction of issued and paid-up equity share capital of the petitioner company, as approved by the shareholders vide special resolution passed in the annual general meeting held on 29.9.2005, is hereby confirmed and the minute confirming the reduction is hereby approved under Section 103(l)(b) of the [Companies Act, 1956](#):

The issued and paid up share capital of the petitioner company stands reduced from Rs. 63,48,12,460 divided into 6,34,81,246 fully paid up equity shares of Rs. 10 each to Rs. 57,13,31,230 divided into 5,71,33,121 equity shares of Rs. 10 each fully paid-up and upon such reduction coming into effect-- every shareholder of the petitioner company, whose name will appear in the register of members on such date to be fixed by the company in consultation with the stock exchanges where its shares are listed, shall receive 90 new fully paid up equity share of Rs. 10 each in lieu of 100 shares held as on the record date and his 10 fully paid up equity share of Rs. 10 each will stand cancelled.

11. The Registry shall issue a formal order in the prescribed form within three weeks. The petitioner company is directed to file certified copy of the order including the minute, as approved above, with the Registrar of Companies, Kanpur, within the prescribed period. The reduction in capital shall take effect upon such registration.

12. The petitioner company is further directed to publish notice of registration of the certified copy of the order and the minute, within 30 days of such registration, in each of the editions of the two newspapers in which the petition was advertised,

namely, the Times of India (English) published from Delhi, Bombay and Lucknow and Amar Ujala (Hindi) published from Kanpur and Delhi. The notices so published shall also indicate that the reduction in capital has been effected pursuant to the debt restructuring approved by the joint lenders under the Corporate Debt Restructuring Scheme vide CDR Cell approval letter dated 15.12.2004.

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