In Re: Vikram Greentech (India)

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Court : Company Law Board CLB

Decided On : Jun-13-2005

Reported in : (2005)62SCL623

Judge : S Balasubramanian

Appellant : In Re: Vikram Greentech (India)

Judgement :

1. Sub-section (2) of Section 79 of the Companies Act, 1956 ("the Act") allows a company to issue at a discount shares in the company of a class already issued, if certain conditions are fulfilled, as embodied in Clauses (i) to (iv) therein with the sanction of Company Law Board.

2. Proviso to Clause (ii) of Sub-section (2) of Section 79 of the Act, stipulates that no such resolution passed in the general meeting shall be sanctioned by the Company Law Board if the maximum rate of discount specified in the resolution exceeds ten per cent, unless that Board is of the opinion that a higher percentage of discount may be allowed in the special circumstances of the case.

3. The petition has been filed by M/s. Vikram Greentech (India) Limited ("the petitioner company") under Section 79 of the Act, seeking the sanction of this Bench for the issue of 60,00,000 equity shares of Rs. 10/- each on Rights basis in the ratio of 1:1 at a discounted price of Rs. 05/- each for the reasons enumerated therein.

4. In a nutshell, it is the case of the petitioner that the company has to pay back its liability of Canara Bank, the secured creditor, and is also in need of working capital for its own rejuvenation from liquidity crisis and survival for its employees and labourers as the company is a labour oriented unit. Financially the company, at present, can not bear the brunt of high interest burden on itself which is impeding its capability to repay its outstanding instalments to the secured creditors. Lack of funds for its working capital, on the other hand, is not allowing the company to perform at its highest level and achieve profits. During the year 2003-04, the company achieved a turnover of Rs. 714.03 lakhs as compared to last year's turnover of Rs. 419.02 lakhs, thereby showing a rise of 70.40% in turnover, while the export turnover rose by 78.12% achieving a figure of Rs. 670.71 lakhs. Despite such rise in turnover the working of the company resulted in a net loss of Rs. 68.85 lakhs. With a view to turn around from the financial constraints and to struggle for its existence in the stiff competitive corporate arena, it is necessary that company's proposal to issue 60,00,000 equity shares to the existing shareholders of the company as mandated in the Extra-Ordinary General Meeting held on 12/11/2004, in the ratio of 1:1 at a discounted price of Rs. 05/- per share, be sanctioned by this Bench.

5. The petitioner company was incorporated under the provisions of the Companies Act, 1956, in the State of West Bengal, on 14/09/1993 as a private company limited by shares and subsequently, it converted into public limited company effective on the issue of fresh certificate by the Asstt. Registrar of Companies, West Bengal, on 01/06/1995. The company is stated to be engaged in the business of cultivating, growing, producing and developing various varieties of roses, lotus, tulip etc. and also the business of farmers of the foregoing items for merchandise fresh or preserved, cut or crushed. The company is a 100% E.O.U. The authorised share capital of the company is Rs. 12.00 crores out of which 55,78,947 equity shares of Rs. 10/- each have been subscribed and paid up. The shares are not quoted in any stock exchanges.

6. The petitioner company enumerated in its petition, the following circumstances for consideration of this Bench to accord sanction to issue 60,00,000 equity shares of Rs. 10/- each on Rights basis in the ratio of 1:1 at a discount of Rs. 05/- per

share i.e. @50% : o The petitioner company established a floriculture unit at an estimated cost of Rs. 1210 lakhs near Loanvala in the District of Pune, Maharashtra. The project was financed by promoters to the tune of Rs. 379.60 lakhs, The Industrial Credit and Investment Corporation of India (ICICI) Rs. 180.20 lakhs, Technology Development and Information Company of India Ltd. (TDICI) Rs. 180.20 lakhs, Term Loan/Lease Rs. 470.00 lakhs. The petitioner company entered into a Equity Subscription Agreement with TDICI and a Subscription Agreement with ICICI on 26/05/1995. The petitioner company also availed a financial assistance by way of loans from Canara Bank, Agri Hitech Branch, Pune; ICICI, Mumbai and National Horticulture Board ("NHB"), New Delhi. The borrowed fund from Canara Bank and NHB are secured against charge over land and building, Plant and Machinery and other fixed assets of the petitioner company.

o Due to devastating cyclone and labour problem in 1995, the petitioner company suffered a severe jolt and damages to its Unit and other assets, resulting in erosion of its entire net worth. In spite of such constraints, the petitioner company made a cash profit in the year 2003-04 and the export turnover rose by 78.12% achieving a figure of Rs. 670.71 lakhs and a profit before depreciation of Rs. 38.19 lakhs.

o Though the loans from ICICI and NHB have been repaid, the petitioner company is gasping for the funds to liquidate the dues of Canara Bank as well as for its working capital requirements and replacement of its nursery plants.

o To augment working capital requirement and to pay off the secured loan partly, an Extra-Ordinary General Meeting was convened and held on 18/03/2004 preceded by a Board Meeting on 18/02/2004, whereat a special resolution was passed to issue further shares at par, as right issue, in the ratio of 1:1 to be offered to the existing shareholders whose name appeared on the Register of Members of the company as on 18/03/2004, in terms of Section 81(1) of the Act. But entire endeavour of the company proved abortive as none of the shareholders came forward to subscribe to the proposed rights issue.

Nor did any bank/financial institution or financier was willing to lend funds to the company.

o Seeing no other alternative left, the petitioner company again convened an Extra-Ordinary General Meeting of the shareholders on 12/11/2004, preceded by a Board Meeting on 09/10/2004, whereat the shareholders present at the meeting constituting 62% of the issued capital, mandated to the rights issue of 60,00,000 equity shares of Rs. 10/- each, in the ratio of 1:1 at a discounted price of Rs. 05/- per share, subject to the approval of the CLB. The Special Resolution has been filed with the Registrar of Companies, West Bengal, in Form No. 23, on 10/12/2004. The said resolution is set out below : "Resolved that 60,00,000 equity shares of Rs. 10/- each (hereinafter referred to as 'New Shares') be issued by the company, for cash at discount of Rs. 05/- per share i.e. @50% or such lower discount and on such terms as may be required or imposed by the Company Law Board, and in pursuance of Section 79 & 81(1) of the Companies Act, 1956, the new shares be offered to the persons as Rights shares whose names appear on the Register of Members of the company as holder of shares in the company on 12th day of November, 2004, in proportion of ONE new share for every ONE equity share held by them, with the right to supply for additional shares or renunciation if so desired." "Resolved further that the new shares rank pari passu with the existing equity shares in the company save and except that for the financial year ending 31^st March, 2005, they shall be entitled to proportionate dividend, if declared for the year." "Resolved further that pursuant to Sub-section (2) of Section 79 of the Companies Act, 1956, as application be made to the Company Law Board seeking their approval to the issue of shares at discount." 7. Shri Manoj Banthia, Practising Chartered Accountant and Authorised Representative of the petitioner company has reiterated the facts and circumstances under which the 60,00,000 equity shares of Rs. 10/- each were resolved to be issued at a discount of 50%. As per the proviso to Sub-section (2) of Section 79 of the Act, there should be special circumstances which justify the issue of shares at a discount of more than 10%. In the present case, the petitioner company has been incurring losses for the last three years as shown hereunder :--Year ended Paid up share Turnover Net loss Accumulated capital (Rs. In lakhs) (Rs. In lakhs) loss (Rs. In lakhs) (Rs. In lakhs)--31.03.02 557.89 405.58 364.04

973.58--31.03.03 557.89 419.02 90.58 1064.17--31.03.04 557.89 714.03 68.85 1133.02-- During the fiscal year 2003-04, the petitioner company has achieved a turnover of Rs. 714.03 lakhs as compared to last year's turnover of Rs. 419.02 lakhs, thereby showing a rise of 70.40% in turnover. While the export turnover rose by 78.12% achieving a figure of Rs. 670.71 lakhs, the working of the company resulted in a net loss of Rs. 68.85 lakhs.

The accumulated losses rose to Rs. 1133.02 lakhs during the year 2003-04 against the last year loss of Rs. 1064.17 lakhs.

8. The Authorised Representative has stressed that the Board of Directors of the petitioner company has been consistently exerting their efforts to revamp the performance of the company by exploring possibilities for other and better varieties of flower plantation. The company's poly house comprises 6.2 hectors with around 5.2 lakhs plant.

It has acquired a good position in the international market and it is extending its trade to new foreign countries each year He stoutly demonstrated the necessity of sanction of this Bench to the petitioner company's proposal to issue shares at a discounted price to augment fund to liquidate the liability of Canara Bank through O.T.S. and also to meet the working capital requirement. It will make the petitioner company as a profit making entity. Above all, the petitioner company is confident of overcoming the present financial constraint by generating additional income. Other secured creditors have been paid off. Out of 14 shareholders, 12 shareholders holding 34,58,947 shares (against 55,78,947 issued shares) which constitutes 62% of the issued capitals, have unanimously approved the petitioner company's proposal to issue shares at a discounted price. Unsecured creditors like M/s. Axix Vyapaar Pvt. Ltd.; M/s. Vikram Pvt. Ltd.; M/s. Vikram International Pvt. Ltd.; M/s. Vikram India Ltd.; M/s. Monolink Trexim Pvt. Ltd. and M/s. Pratibha Systex Ltd. have given their no objection to the issue of shared at a discounted price. According to the petitioner, the fund raised from the issue of shares at a discounted price will be utilised in the following manner :--Payment to Canara Bank under one time settlement (OTS) 195.00--Replacement of mother plants (bushes) - 1,20,000 X Rs. 60/- 72.00--Replacement of Poly House - Polythene 20.00--Chemicals & Fertilizers (Nutrients) (to improve soil quality) 13.00-- Total : 300.00 In the facts and circumstances of the case, it is appropriate to give incentive to the shareholders who may be subscribing to the shares of the company.

9. I have considered the matter carefully. It is on record that the company's effort to issue right shares at par has failed, as no shareholder was willing to subscribe to the Rights issue. I have also noted that the petitioner company has paid off the loans availed of from other secured creditors excepting Canara Bank; that some unsecured creditors have given their no objection to the petitioner company's proposal; and that the shareholders of the petitioner company constituting 62% of the issued capital have approved the special resolution at the Extra-Ordinary General Meeting held on 12/11/2004, resolving to issue shares at a discounted price. On an overall assessment of the present case, the only incentive that deserves to be granted to the petitioner company is to allow it to go ahead with the issue of shares at a discounted price as mandated by the shareholders of the company at the Extra-Ordinary General Meeting held on 12/11/2004. Guided by the materials on record, I am of the view that there is adequate justification for sanctioning the issue of shares at 50% discount. Accordingly, in the interest of the company, its members and creditors, I accord sanction to the Rights issue of 60,00,000 (sixty lakhs) equity shares in the ratio of 1:1 to be issued at a discount of Rs. 05/- (Rupees Five only) per share i.e. @ 50%. The said shares totalling in all 60,00,000 shall be issued within 02 (two) months from the date of receipt of this order, It is observed that the authorised share capital of the petitioner company being Rs. 12,00,00,000 (Rupees Twelve Crores) only divided into 01,20,00,000 equity shares of Rs. 10/- each, is adequate to accommodate further issue of rights shares. If, however, there is any need for raising the authorised share capital of

the company, it may do so in accordance with law.