

In Re: Ocl India Ltd.

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Court : Orissa

Decided On : Mar-30-1998

Reported in : AIR1998Ori153; [1999]95CompCas429(Orissa)

Judge : A. Pasayat, J.

Acts : [Companies Act, 1956](#) - Sections 101, 102 and 103

Appeal No. : Company Act Case No. 27 of 1997

Appellant : In Re: Ocl India Ltd.

Advocate for Pet/Ap. : G. Ahmed, Adv.;A.K. Parija, ;S.P. Sarangi, ;B. Ch. Mohanty, ;P.P. Mohanty, ;Pitambar Acharya, ;A.C. Samantray and ;A. Pattanaik, Advs.;D.K. Mohapatra, ;P.C. Sahu, ;J.N. Sahu, ;S.C. Ghose and ;S. Ghos

Judgement :

Pasayat, J.

1. In this application purported to be under Sections 78, 100, 101,102 and 103 of the [Companies Act, 1956](#) (in short, the 'Act') M/s. OCL India Limited (hereinafter referred to as the 'Company/Petitioner') has prayed for an order directing reduction of capital on the basis of special resolution passed in terms of Section 189 of the Act at a general meeting held on 29th September, 1997, and approve the minutes as shall be dealt with infra. The said resolution reads as follows :

'RESOLVED, by way of special resolution That pursuant to Sections 78 and 100 and other applicable provisions of the [Companies Act, 1956](#) and subject to confirmation of the High Court at Orissa and any other approval/s as may be required, the premium for 18,00,000 ordinary shares of Rs. 10/- each which have been allotted on 1st January, 1997 and 21st July, 1997 upon conversion of Zero Coupon Convertible Debentures (ZCCDs) issued on Rights basis be reduced from Rs. 130/- per share to Rs. 95/- per share by cancellation of liability for payment of Rs. 35/-per share payable on third and final call.

RESOLVED FURTHER that Board of Directors of the Company be and arc hereby authorised, to move a petition to the High Court at Orissa for an order confirming aforesaid reduction, to give such directions as the Board may think fit and proper, including directions for or settling any question of difficulties that may arise, to take all such consequential and/or incidental steps and do all such acts, deeds, matters and things of whatsoever nature as Board in its absolute discretion consider necessary, expedient or proper.'

2. Reasons seeking for reduction are stated to be as follows:

(a) By a letter of offer dated September 18, 1996 the company issued, on rights basis to its shareholders, 18,00,000 Zero Coupon Convertible Debentures of Rs. 140/- each (hereinafter referred to as 'ZCCDs') along with detachable warrants to part finance the expansion and/or modernisation projects undertaken by the company in its cement and Refractory Plants situated at Rajgangpur in the District of Sundargarh, Orissa.

(b) As per the terms of the issue of the said ZCCDs, each ZCCD was to be converted into one ordinary share of Rs. 10/- each at a premium of Rs. 130/- per share. Further, as per the terms of the said issue, the amounts to be appropriated towards share capital and share premium on receipt of application and call moneys payable were as follows :

Amount in Rs.

Amount payable	Amount	Appropriation on/after	Share capital	Conversion of ZCCDs
Share premium				
On application	35.00	2.50	32.50	On First Call
35.90	2.50	32.50		On Second Call
			35.00	On Third and Final Call
			2.50	
			32.50	
Total	140.00	10.00	130.00	

(c) Pursuant to the aforesaid 18,00,000 ZCCDs were duly allotted by the Company on December 12, 1996 and July 21, 1997. On January 1, 1997, 16,37,366 ZCCDs held by Indian Residents out of the said 18,00,000 ZCCDs were duly converted into 16,37,366 ordinary shares of Rs. 10/- each at a premium of Rs. 120/- per share. Further on July 21, 1997, the balance 1,62,634 ZCCDs held by non-residents were also duly converted into 1,62,634 ordinary shares of Rs. 10/- each at a premium of Rs. 130/- per share after receipt of approval from the Reserve Bank of India in respect thereof. As per the terms of the said issue, Rs. 2.50 out of the application money of Rs. 35/- received by the company for each ZCCD was appropriated and credited to share capital account and the balance Rs. 32.50 was appropriated and credited to the share premium account of the Company. Further, the first call of Rs. 35/- on the said converted ordinary shares issued to Indian Residents was made on June 25, 1997 and the call money was to be paid by August 7, 1997. The second call also of Rs. 35/- on such converted ordinary shares was made on June 25, 1997 and the call money was to be paid by October 7, 1997. The 1st and 2nd calls were made on 1-9-1997 in respect of the aforesaid 1,62,634 converted ordinary shares issued to non-resident shareholders. The first call money was to be paid by October 7, 1997 and the second call money was to be paid by Decembers, 1997.

(d) The issue price of the said ZCCDs was fixed at Rs. 140/- each during June, 1996, when the fully paid up ordinary shares of the company was quoted on the Mumbai Stock Exchange at Rs. 205/- per share. On 22nd July, 1996 when the ordinary share quotation of [he Company became ex-right, the price per share was quoted at Rs. 185/- which gradually came down and ranged between Rs. 160/- and Rs. 134/- during October/ November, 1996, i.e., the time when the issue was open for subscription. Since the close of the issue, the price of existing fully paid

ordinary shares of the Company further declined to the range of Rs. 100/- and Rs. 120/- per share.

(e) The said object of the Company for the part financing of which the aforesaid rights issue was made has already been completed and the expanded plant commenced commercial production with effect from 19th May, 1997. Apart from the amounts received from the Industrial Finance Corporation of India Limited and the amounts received on the said ZCCDs, the company was able to meet and generate the balance funds required for the said project from internal accruals.

(f) In view, inter alia of the above the Board of Directors of the Company recommended to the shareholders that the share premium on the aforesaid shares be reduced from Rs. 130/- to Rs. 95/-per share by extinguishing the liability for payment of third and final call of Rs. 35/- per share to be received on 2nd call, a sum of Rs. 5/- may be appropriated towards capital and the balance sum of Rs. 30/- be appropriated towards share premium, thus making the share fully paid up. Such decision and opinion of the Board of Directors of the Company was taken and formed at its Board meeting held on 14th August, 1997 and September 1, 1997.

(g) The said reduction will have beneficial results for the Company, its shareholders and all concerned.

3. Section 100 of the Act deals with special resolution for reduction of share capital. In exercising its power the Court will have due regard to the interests of creditors, who may consent or object to the reduction. For a company to reduce its share capital in any manner set out in Section 100, it must have power given to it under its articles to do so. Subject to confirmation by the Court as required under Section 101 of the Act, a Company may, if authorised by its articles, effect a reduction of its share capital in any way which it may think fit by special resolution, including in particular any of the following ways :

(1) it may reduce or altogether extinguish the liability on any unpaid or partly paid up shares;

(2) it may, by reducing the face value of any shares or otherwise, cancel any paid up share capital which is lost or cancel it to the extent to which there is found deficiency in available assets;

(3) it may pay off any paid up share capital which is found to be in excess of the capital requirements of the company.

Reduction of capital in the following ways is within the Act:

(1) diminishing the nominal amount of the shares so as to leave as less sum unpaid;

(2) diminishing the nominal amount of any shares by writing off or repaying paid up capital;

(3) diminishing the nominal amount by combining both (1) and (2);

(4) diminishing the number of shares by extinguishing the existing liability on certain shares, writing off or repaying the whole amount paid up thereon and cancelling them. The statute has not prescribed the manner in which the reduction is to be carried out nor has it prohibited any method of effecting that object per Lord Herschell, L.C. in *British American Trustee and Finance Corporation v. Couper*, 1894 AC 397 at page 405, quoted with approval by Lord Reid in *Re : Westburnt Sugar Refineries Ltd.*, (1951) 1 All ER 881 at page 885 which added that 'paying off capital can be done otherwise than by payment of money'. Important though its task is to see that the procedure by which a resolution is carried through, is formally correct and that creditors are not prejudiced; it has the further duty of satisfying itself that the scheme is fair and equitable between the different classes of shareholders. What then is the duty of the Court in considering the matter of this kind? In the first place, the interests of creditors must be safeguarded, but here that has been done. Secondly, the interests of shareholders may have to be considered but in the case there has been no opposition by any shareholder at any time and it is difficult to see how there could be any prejudice to any single shareholder. Thirdly, there is the public interest to consider.

The Court has first to be satisfied that the creditors who had objected to the reduction that either their consent to the reduction has been obtained or their debts or claims have been discharged or settled or secured. The Court has the power to dispense with this procedure if there is strong cause. Thus in *Re Meur's Brewery Co. Ltd.*, (1919) 1 Ch 28 (1918-19) All ER Rec 1192, debenture-holders unsuccessfully objected that the proposed reduction would be prejudicial to their security by enabling the company to pay dividends out of profits instead of such profits being applied in making good the lost capital. No evidence was adduced, however, to show that part of the lost capital was attributable to circulating capital. The Court can also correct immaterial errors in the resolution. *Willaire Systems pic*; 1987 LC 67.

Special circumstances which would justify a direction for dispensing with creditors' objections must be such as would satisfy the Court that so far as could be reasonably foreseen the relevant creditors would not be adversely affected by the proposed reduction. But if the creditors actually appear and object, the Court would dispense with a creditor's assent only if the company secured payment of his claim by appropriating a sufficient sum : *Re Lucama Temperance Billiard Halls (London) Ltd.*, (1965) 3 All ER 879 : (1966) 1 Comp LJ 350 (Ch D). 'The power under Section 102 is conferred on the Court in order to enable it to protect the interests of dissenting shareholders and even those who do not appear. Before confirming a reduction the Court must see that the interests of the minority shareholders and of the creditors are adequately protected and that there is no unfairness even though this is an internal matter of the Company' *Indian National press (Indore) Ltd.*, In re : (1989) 66 Com Cases 387 (MP).

Procedure to be adopted for reduction of share capital has been indicated in Rules 46 to 65 of the Companies (Court) Rules, 1959 (in short, the 'Court Rules').

4. The learned Counsel for the Company-petitioner and the creditor-objectors have been heard. There is some dispute raised about correctness of figures indicated in respect of certain creditors. The Company has stated that it has secured the dues of all the creditors who have raised objections. Taking into consideration the objections filed, a sum of Rs. 24 lakhs was directed to be kept in fixed deposit in

the name of the Registrar (Judicial) of this Court. It is stated that the order has been complied with.

5. Taking into consideration the objections received and the fixed deposits made to take care of the aggrieved creditors, the following minutes as formulated by the Company-petitioner to be registered under Section 103(1)(b) of the Act appear to be in order and are approved on the basis of the resolution adopted at the General meeting dated the 29th September, 1997 as extracted at para 1 at page 2 (supra).

'The Authorised Share Capital of the Company is Rs. 15 ,00,00.000 divided into 1,00,000 shares of Rs. 100/- each and 1,40,000 shares of Rs. 10/- each. The issued and Subscribed Shares capital on the date of registration of this minute is Rs. 7,20,000,000 divided into 72,00,000 Ordinary Shares of Rs. 10/- each on which an aggregate amount of Rs, 7,07,24,500 is paid up towards capital and an aggregate amount of Rs. 12.75,500 is due to be received towards capital in clearance of calls in arrears.'

The Company-Petitioner is directed to take necessary steps to deliver to the Registrar of Companies, Orissa, a certified copy of the order including the minutes as approved within a period of ten days from today. Consequentially alteration in the memorandum of the association of the Company-Petitioner proposed by the special resolution passed in accordance with Section 189 at the General meeting held on 29th September, 1997 be and the same is hereby confirmed. The memorandum of association of the Company as altered by this order shall be duly set out in terms of Rule 42 of the Court Rules.

The Company Act case is accordingly disposed of. Urgent certified copy of the order on proper application shall be granted by tomorrow (31-3-1998)