Dion Global Solutions Limited Vs. ....

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SooperKanoon Citation : sooperkanoon.com/954981

Court : Delhi

Decided On : Dec-20-2012

Judge : Indermeet Kaur

Appellant : Dion Global Solutions Limited

Respondent : ....

Advocate for Pet/Ap. : Mr. N.P.S. Chawla

Judgement :
* IN THE HIGH COURT OF DELHI AT NEW DELHI % Date of Judgment:20.12.2012 + CO. PET. 431/2011 In the matter of The Companies Act, 1956 And Petition under Sections 100to 103 of the Companies Act, 1956 for confirmation of Reduction of Share Capital DION GLOBAL SOLUTIONS LIMITED Petitioner/Petitioner Company Through Mr. Sandeep Sethi, Senior Advocate with Mr. NPS Chawla and Ms. Simran Sethi, Advocates for the Petitioner Company Mr. K.S. Pradhan, Astt. Registrar of Companies for the Regional Director Mr. Ashish Makhija, Amicus-Curiae INDERMEET KAUR, J.

(Oral) 1. The present petition and the connected applications have been filed under sections 100- 103 of the Companies Act, 1956 (for short Act) by the Petitioner Company seeking approval of this Court to the proposed reduction of share capital and reserves as resolved by its Board of Directors in the meeting held on 28.05.2012 and also by Membersof the Company on 05.07.2012.

2. The registered office of the Petitioner Company is situated within the National Capital Territory of Delhi and is within the jurisdiction of this Court.

3. That the present petition was filed on 01.10.2011, in whichthis Court vide its order dated 18.10.2011dispensed with the requirement of section 101(2) of the Act. Thereafter, in view of the change in the capital structure of the Petitioner Company vis--vis the capital structure presented in the Company Petition No. 431 of 2011 and in order to modify the earlier resolution passed by the Board of Directors and Members, the Petitioner Company filed the Company Application No. 1498 of 2012 for obtaining confirmation of this Court to the resolution passed by the Members of the Petitioner Company on 05.07.2012 for reduction of share capital and reserves against the accumulated losses as appearing in the books of accounts of the Petitioner Company as at March 31, 2012.

4. The Petitioner Company, thereafter,has filed Company Application No. 2277 of 2012 for correction in the form of minute filed as Annexure P to the Company Application No. 1498 of 2012.

5. Details with regard to the date of incorporation, registered office and authorized, issued, subscribed and paid up share capital of the Petitioner Company have been given in the Petition and the connected application.

6. A copy of the Memorandum and Articles of Association of the Petitioner Company as well as the audited Annual Accounts of the Petitioner Company for the year ended March 31, 2012are enclosed with the Petition and the connected application.

7. By the Company Application No. 1498 of 2012 in Company Petition No. 431 of 2011, the Petitioner Company proposes to write off the accumulated losses as appearing in the books of accounts of the Petitioner Company as on March 31, 2012 against the balance in Securities Premium Account, Amalgamation Reserve Account and part of the paid up equity share capital, in the manner and to the extent described in the said Company Application No. 1498 of 2012 and the Form of Minutes placed along with Company Application No. 2277 of 2012.

8. Reasons for the reductionof share capital of the Petitioner Company as stated in the Petition and the connected application are that as a result of huge amount of brought forward losses, the capital of the Petitioner Company is not adequately represented by the available assets and improvements in the performance of the Petitioner Company cannot be appropriately reflected unless past losses are written off. Accordingly, the Board of Directors considered it desirable to undertake right sizing of the Balance Sheet of the Petitioner Companyfor writing off the accumulated losses as appearing in the books of accounts of the Petitioner Company as at March 31, 2012 against the amount lying under Amalgamation Reserve Account, Securities Premium Account and paid-up equity share capital of the Petitioner Company.Consequent to the approval of the present petition and the connected applications, the amount of loss so adjusted shall be given effect to in the books of accounts of the Petitioner Company as at March 31, 2012 so as to present the true and correct view of the Balance Sheet of the Petitioner Company.

9. Learned counsel for the Petitioner submits that Article 13 of the Articles of Association of the Petitioner Company authorizes the Petitioner to reduce its capital from time to time, by way of Special Resolution, in any manner permitted by law.

10. A copy of the special resolution of the Petitioner Company in accordance with section 189 of the Companies Act, 1956 passed by the Members of the Petitioner Company dated 05.07.2012, has been placed before this Court.

11. This Court vide its order 18.10.2011 had directed that the citations be published in Financial Express (English Edition) and Jansatta (Hindi Edition).Further, this Court after hearing the Company Application No. 1498 of 2012 in Company Petition No. 431 of 2011,vide order dated 09.08.2012,had directed the Petitioner Company to issue notice to the Registrar of Companies, NCT of Delhi & Haryana. Notice was accepted by Mr. K.S. Pradhan, Deputy Registrar of Companies on behalf of the Regional Director (Northern Region).Affidavitsconfirming the publications and service of petition to the office of Regional Director had been filed by the Petitioner Company on 05.01.2012 and 30.10.2012.

12. In response to the notice issued to the office of Regional Director (Northern Region), he has filed an affidavit/representation dated 02.11.2012wherein he has made the following observation:

5. 1 It may kindly be noted that on the one hand the Company is issuing its share at a Premium of Rs. 24/- per share and at the same time the Company has filed the Petition for Reduction of Share Capital to write off its accumulated losses amounting to Rs. 79,18,09,881/-. In view of the above it is submitted that the Petitioner Company may be asked to justify the issue of shares on Premium.

13. The Petitioner Company by way ofits reply to the affidavit of Regional Director as filed with Honble High Court on 06.11.2012 hasstated that the issue price (including share premium per share) of the shares issued by the Petitioner Company was determined as per the formulae given under Regulation 76 (i.e. pricing of equity shares) of the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009 (SEBI ICDR Regulations). It is further stated in the reply of the Petitioner Company that the issuance of shares by the Petitioner Company at a premium of Rs. 24/per equity share was made in compliance with the provisions of the memorandum and articles of association and the SEBI ICDR Regulations and the requirements of the BSE Limited (BSE) where the shares of the Petitioner Company are listed. The Petitioner Company has also submitted that the said issue of shares was duly approved by the Board of Directors and Members of the Petitioner Company, BSE and also the statutory auditors of the Petitioner Company. In view of the reply of the Petitioner Company and the submissions made by the Counsel of the Petitioner Company, Mr. K.S. Pradhan does not wish to press this observation. Accordingly the same stands disposed of.

14. Further, no objections have been received to the proposed reduction of paid up equity share capital and reserves from any other party. Mr. N.P.S. Chawla, learned counsel for the Petitioner Company, has filed an affidavit dated 06.11.2012 confirming that no objections have been received pursuant to citations published in the newspapers.

15. In view of the facts and circumstances of the present case, the resolution for reduction of share capital and reserves passed by the special resolution dated 05.07.2012 along with the corrected form of minute of the reduction in share capital proposed in para 6 of the Company Application No. 2277 of 2012 in Company Petition No. 431 of 2011 are confirmed and approved.

16. The order passed today and the form of minute mentioned in para 6 of the Company Application No. 2277 of 2012 in Company Petition No. 431 of 2011, as approved by this Court shall be registered in accordance with Section 103 of the Companies Act, 1956 by the Registrar of Companies and shall be published in terms of sub-section 3 of section 103 in the Financial Express (English) and Jansatta (Hindi).

17. Learned Counsel for the Petitioner states that the Petitioner Company would voluntarily deposit a sum of Rs. 50,000/- in the Common Pool fund of the Official Liquidator within three weeks from today. The statement is accepted.

18. The Petition and the connected application are allowed on the above terms. Order Dasti. INDERMEET KAUR, J DECEMBER 20 2012 nandan