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Updates on

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CORPORATE

Sandvik Asia Limited v. Bharat Kumar Padamsi and Others¹

The Division Bench of the Bombay High Court recently approved a resolution passed by Sandvik Asia Limited (“Company”) for reduction of capital under section 100 of the Companies Act, 1956 (“Companies Act”) by canceling the shares held by and making payment to, minority shareholders and thereby rejecting the decision of the Single Judge and the group of minority shareholders.

Facts-

The Company had been de-listed from the stock exchanges with effect from September 9, 2002. The promoter shareholding in the Company was 95.54% and the remaining 4.46% was held by the non promoter minority shareholders. The Company had proposed a resolution for reduction of its paid up equity share capital by paying off to holders of equity shares (other than promoter shareholders) an amount of Rs. 850/- per share and extinguishing such shares in accordance with the provisions under section 100 of the Companies Act. However, on objection by the dissenting minority shareholders, the High Court rejected the Company’s petition on the following grounds-

¹ Appeal No. 308 of 2004, Order dated April 4, 2009

- (1) No separate class meeting (in addition to the general meeting of all shareholders under Section 100 of the Act) was convened for the approval of resolution of reduction of capital by the minority shareholders.
- (2) No option was given to minority shareholders apart from accepting cash in lieu of reduction of capital.
- (3) As only minority shareholders' shares were being cancelled, the Company ought to have framed a proper scheme under section 391 of the Companies Act giving the minority shareholders a fair opportunity.

Against this order the Company preferred an appeal before the Division Bench of the High Court

Relevant Provisions-

Section 100 of the Companies Act states that-

(1) Subject to confirmation by the [Tribunal], a company limited by shares or a company limited by guarantee and having a share capital, may, if so authorised by its articles, by special resolution, reduce its share capital in any way; and in particular and without prejudice to the generality of the foregoing power, may-

(a) extinguish or reduce the liability on any of its shares in respect of share capital not paid-up;

(b) either with or without extinguishing or reducing liability on any of its shares, cancel any paid-up share capital which is lost, or is unrepresented by available assets; or

(c) either with or without extinguishing or reducing liability on any of its shares, pay off any paid-up share capital which is in excess of the wants of the company; and may, if and so far as is necessary, alter its memorandum by reducing the amount of its share capital and of its shares accordingly.

(2) A special resolution under this section is in this Act referred to as "a resolution for reducing share capital".

Thus, as per section 100 of the Companies Act, a company (duly authorized by its Articles of Association) can reduce its share capital in the following ways-

- (1) Extinguishing liability on share capital which is not paid up or,
- (2) Cancel any paid up share capital which is lost or which is not represented by assets, or

- (3) Pay off any paid up share capital which is in excess of the wants of the company.

Issues-

The issues raised broadly encompassed questions as to whether a company is free to choose its mode or extent of reduction of capital under section 100 of the Companies Act and whether the mode adopted in the present matter was fair to the minority shareholders.

Held-

The Division Bench held that a company can reduce its capital in any manner under section 100 of the Companies Act. Further the Bench held that the only objection that needs to be addressed is whether it is unfair and inequitable to wipe out a class of shareholders i.e. non promoter shareholders.

With regard to the issue of fairness the Division Bench relied on the decision of the Supreme Court in the case of Ramesh B. Desai² which was based on the observation of the House of Lords in the case of British and American Trustee and Financial Corporation Limited v.

Couper³ and in the case of Poole and Ors v. National Bank of China Limited⁴ which cases observed that (i) the term 'manner' had not been defined under the legislations, (ii) that the policy of the legislations is to entrust with the majority the right to decide whether there should be reduction of capital and how it should be carried out and lastly, (iii) that the objection to the capital reduction was made by an insignificant number of shareholders who did not demand and had never demanded better pecuniary terms, and any insistence by them on retaining their holdings without substantiating their ground for the same, which in all reasonable probability can never bring any profit to them, may be detrimental to the company.

One of the other contentions of the Respondents was as follows-

"...This separate class meeting (in addition to the general meeting of all shareholders under Section 100 of the Act) would be a minimum fairness requirement to ensure that the resolution affecting the shares of minority shareholders is not determined by the majority promoters, who though unaffected, would be able to decide the fate of the minority shareholder... "

² Ramesh B. Desai v. Bipin Vadilal Mehta and Ors [2006] 5 SCC 638 SC

³ [1894] AC 399 (HL)

⁴ [1907] AC 299 (HL) 237

Regarding the above contention the Division Bench supported the contention of the Appellant that:

“Section 100 of the said Companies Act does not contemplate separate class meetings of distinct classes of shareholders of a company.”

On the basis of the above and considering that the overwhelming majority of the minority shareholders had voted in favor of the reduction, the Division Bench held that it would not be justified in withholding the sanction to the reduction and allowed the appeal setting aside the order of the Single Bench.

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