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21 June 2019

National Company Law Tribunal Bengaluru Bench approves selective capital reduction scheme involving squeeze-out of minority shareholders

Bengaluru Bench of National Company Law Tribunal in the case of Yokogawa India Limited, approved a selective capital reduction scheme of an unlisted public company which involved a minority squeeze-out providing an exit to the public shareholders of the company under the provisions of Section 66 of the Companies Act, 2013 (the Act)

Facts:

- Yokogawa India Limited (Petitioner Company or Company) is an unlisted public Company with the promoter group shareholding constituting 97.12 percent and the remaining 2.79 percent held by non-promoter group (public shareholders).
- The Company was originally a listed company whose shares were delisted from the National Stock Exchange and Bangalore Stock Exchange in February 2007. Despite delisting public shareholding, the Company continued to have as high as 1,923 public shareholders as on 26 October 2016 (as per the NCLT orders).
- Company received requests from various public shareholders to provide them with an opportunity to liquidate the shares held by them in the Company. Considering the request from the public shareholders, the Company decided to proceed with a selective capital reduction by paying out the share capital held by the public shareholders. The payout consideration per equity share was determined as ~INR 923, based on a valuation exercise carried out by an independent valuer.
- Accordingly, a petition was filed with NCLT seeking approval for the scheme of capital reduction that sought to reduce the share capital of the Company to the extent held by public shareholders and thereby providing exit to all public shareholders.

Observations on the scheme:

The Registrar of Companies, Karnataka (RoC) and the Regional Director (RD) had (pursuant to the notices issued to them intimating about the proposed capital reduction) vide their report, had the following observations which were considered by the NCLT in approving the scheme:

Utilisation of securities premium for capital reduction

RoC was of the view that the provisions of Section 52(2) and 52(3) of the Act provides for utilisation of securities premium for the purposes of buyback of shares, redemption of redeemable preference shares etc. Therefore, if the Company sought to reduce its capital it could have adopted buyback of shares under the provisions of Section 68 of the Act, which could also compensate/benefit shareholders and provide an exit opportunity to public shareholders.

In response to this, the Company submitted that the capital reduction exercise has been approved by majority of equity shareholders. In the absence of specific provisions mandating to choose one option over the other, companies were entitled to adopt any method (i.e. capital reduction or buyback) within the legal framework most appropriate under the circumstances.

Convening of secured/unsecured creditors meetings

The RoC observed that the Company had open charges on immovable properties and book debts, for which no meetings were convened, seeking approval from creditors towards the proposed scheme.

The Company responded that it had served notices to all secured and unsecured creditors individually, seeking their objections if any, to the scheme within prescribed time frame of 3 months. The Company did not receive any objections / representations during the open period. Further, it was emphasised that the proposed scheme did not contemplate any compromise or arrangement with the creditors and hence did not adversely affect the interests of the creditors.

Ruling of NCLT

Based on the above submissions and the rationale enumerated in the scheme, NCLT approved the capital reduction.

Key takeaways

- This is a welcome judgement wherein public shareholders who are stuck with a delisted company with their illiquid investment are provided an exit by the company under a scheme of capital reduction. Further, while the rationale to the scheme mentions that the capital reduction was pursued by the company due to the requests made by some of the public shareholders, in effect, it results in a forced exit for other public shareholders who wished to continue to hold their shares in the company and accordingly, raises the larger question on 'forced sale'.
- The Company has adopted the position of not obtaining consent from creditors in the absence of specific provisional / procedural requirement in the Act. While this submission was accepted by NCLT Bengaluru bench, the provisions for capital reduction do not specifically exempt completely companies from obtaining consents from creditors. This stand could be challenged by other NCLT benches at the discretion of the judges.
- NCLT also upheld the principle that where there are multiple options available which may substantially achieve the same purpose (buyback v/s capital reduction as suggested by the RoC), the company and its shareholders are free to pursue the option which they feel is appropriate under the circumstances.

Conclusion:

With the objective of the minority squeeze-out being met under the scheme of capital reduction, this order sets a precedent to schemes pursued by unlisted public (erstwhile listed) companies and private companies (with large number of public and employee shareholders), which could not get listed and which seek to provide exit opportunity to non-promoter shareholder groups and minority shareholders.

Note: This alert has been prepared basis the information available in the public domain.

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