

Economy Hotels India Services Pvt Ltd vs Registrar Of Companies & Anr on 24 August, 2020

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) No. 97 of 2020

[Arising out of Order dated 27.05.2020 passed by the National Company Law Tribunal, New Delhi Bench V in C.P. No./149/66/ND/2019].

IN THE MATTER OF:

Economy Hotels India Services Private Limited

...Appellant

Versus

Registrar of Companies & Anr.

...Respondents

Present:

For Appellant: Mr. Sujoy Dutta, Mr. Satvinder Singh, Mr. NPS Chawla and
Mr. Surek Kant Baxy, Advocates

For Respondent: Mr. P S Singh, Advocate for ROC, Ms. Chetna Kandtal,
Company Prosecutor for R1 and R2

J U D G M E N T

Venugopal M. J The Appellant / Petitioner has focused the instant Company Appeal (AT) No. 97 of 2020 being dissatisfied with the order dated 27.05.2020 passed by the 'National Company Law Tribunal', Bench V in Company Petition No. 149/66/ND/2019 in rejecting the petition filed under Section 66(1)(b) of the Companies Act, 2013 and granting liberty to file fresh application after complying with all the requirements of Section 66 of the Companies Act.

2. The 'National Company Law Tribunal', New Delhi, Bench V in C.P. No./149/66/ND/2019 while passing the impugned order on 27.05.2020 at paragraph 15 to 16 had observed the following: -

"15. Section 66 of the Companies Act, 2013 states that "Subject to confirmation by the Tribunal on an application by the company, a company limited by shares or limited by guarantee and having a share capital may, by a special resolution, reduce the share capital in any manner....."

Article 9 of the Articles of Association of the company (page 81) of Paper book) allows it to reduce share capital by passing a special resolution. Board resolution dated 29.7.19 recommended

reduction in capital as per Article 9 of Articles of Association and subject to consent of members by a special resolution (page

111).

We have perused the minutes of the Annual General Meeting of the company held on 19.08.2019 (page 123 to 126 of the paper book). Page 123 of the Paper book records that "With the consent of the Members present, Mr. Balvinder Sahrawat was elected to chair the meeting." On Page 124 of the paper book, it is recorded that the meeting has passed the resolution for reduction of capital "as an ordinary resolution." The minutes of the meeting have been signed by the Chairman of the meeting on pg 126 of the paper book.

Thus, we observe that the company has not met the specific requirement of Section 66 of the Companies Act by passing 'Special Resolution' for reduction of share capital.

The Company has also not complied with the requirements of its own Articles of Association.

16. We are left with no choice but to reject the present application in view of the fact that there is no special resolution for reduction of share capital as prescribed under Section 66 of the Companies Act 2013 and as required in Article 9 of Articles of Association of the company. Section 66 of Companies Act also requires this Tribunal to approve the minutes of resolution passed by the Company which has been passed as ordinary resolution as against the requirement of special resolution [mentioned in Para 2(ii) above also as part of prayer]; the Tribunal is not in a position to approve such minutes in this case."

and consequently, rejected the petition by granting liberty to the Appellant / Petitioner to file fresh application after complying with all the requirements of Section 66 of the Companies Act.

3. The Learned Counsel for the Appellant submits that the Appellant / Company is a closely held private Company, limited by shares, incorporated on 08.08.2012 under the provisions of Companies Act, 1956 and that the instant Appeal is filed through Mr. Rajat Rai, Authorised representative of the Appellant, authorized as per Board Resolution dated 03.07.2020.

4. It is represented on behalf of the Appellant that the Appellant/Pvt. Company, is a wholly owned subsidiary of AAPC Singapore Pte. Ltd., a company incorporated under the laws of Singapore and the shareholding pattern as on 30.06.2019 of the Appellant runs as follows: -

Name of Shareholder No. of shares held % of shareholding AAPC Singapore Pte. Ltd.
67,478,999 equity share 100 of Rs. 10 each Abhishek Goyal as a 1 equity share of Rs.
10 Nominee of AAPC each Singapore Pte. Ltd.

Total 67,479,000 equity share
of Rs. 10 each

5. The Learned Counsel for the Appellant points out that the authorized share capital of the Company as on March 31st, 2018 was Rs. 90 lakhs only divided into 9 lakhs equity shares of Rs. 10/- each and that the issued, subscribed and paid up share capital of the Company as on 31.03.2019 was Rs. 30 lakhs divided into 3 lakhs equity shares of Rs. 10/- each. Further, the Company had 67,17,900 unsecured fully compulsory convertible debentures of Rs. 100/- each as on 31.03.2019.

6. The Learned Counsel for the Appellant brings it to the notice of this Tribunal that as on 30.06.2019, the issued, subscribed and paid up share capital of the Appellant was increased from Rs. 30 lakhs divided into 3 lakhs equity shares of Rs. 10/- each to Rs. 67,47,90,000/- divided into 6,74,79,000 equity shares of Rs. 10/- each.

7. As a matter of fact, Article 9 of the 'Articles of Association' of the Appellant / Company specifies that the Company may, from time to time by a special resolution reduce its share capital in any manner permitted by law.

8. The Appellant / Company had filed C.P. No. 149/66/ND/2019 under Section 66(1)(b) of the Companies Act praying for passing of an order for confirming the reduction of share capital wherein at paragraph 14 it had averred as under: -

"14 That annual general meeting of the Petitioner Company held on August 19,2019 was attended by both the equity shareholders holding 100% of the issued, subscribed and paid up equity share capital of the Petitioner Company. The said equity shareholders present at the said meeting have cast their votes in favour of the aforesaid resolution etc."

9. More specifically, the Appellant/Company in the aforesaid Company Petition at S.No. 6 had sought a relief to confirm the reduction of issued, subscribed and paid up equity share capital of the petitioner company(Appellant) as resolved by the Members in the Annual General Meeting held on August 19th, 2019 by passing the special resolution as set out in para 14. In S.No. 7 of the aforesaid petition, the Appellant/Company had prayed to approve the form of minutes under sub- section 5 of Section 66 of the Act etc.

10. The Learned Counsel for the Appellant contends that the Appellant / Company had placed on record sufficient documents to prove that (a) 'special resolution' as required under Section 66 of the Companies Act, 2013 as well as in terms of the requirement under Article 9 of the 'Articles of Association' of the Appellant Company.

11. The other submission of the Learned Counsel for the Appellant that only due to a 'typographical error' in the extract of 'Minutes', a resolution passed unanimously by the shareholders will not ceased to be a 'special resolution'.

12. The Learned Counsel for the Appellant/Company proceeds to point out that the Tribunal failed to appreciate that the unanimous resolution passed on 19.08.2019 was a 'Special Resolution' passed unanimously by the 'shareholders' of the Appellant.

13. The Learned Counsel for the Appellant submits that the resolution passed on 19.08.2019 was in complete compliance of the all the three requisites of the Section 114(2) of the Companies Act, 2013 and since the Tribunal treated the aforesaid 'resolution' as an 'ordinary' resolution the impugned order is liable to be set aside in the interests of justice.

14. The Learned Counsel for the Appellant to lend support to his contention that the resolution passed on 19.08.2019 by the Appellant Company is a special resolution' adverts to the ingredients of Section 114 of the Companies Act, 2013 which reads as under:-

"2) A resolution shall be special resolution when:

a. With the intention propose the resolution as a special resolution has been duly specified in the notice calling the general meeting or other intimation given to the members of the resolution;

b. The notice required under this Act has been duly given; and c. The votes cast in favour of the resolution, whether on a show of hands, or electronically or on a poll, as the case may be, by members who, being entitled so to do, vote in person or by proxy or by postal ballot, are required to be not less than three times the number of the votes, if any, cast against the resolution by members so entitled and voting."

15. The Learned Counsel for the Appellant refers to paragraph 23 of the Company Petition No. 149/66/ND/2019 filed by the Appellant/Petitioner which is as follows: -

"23. The form of minute proposed to be registered under section 66(5) of the Act is as follows:

The issued, subscribed and paid up equity share capital of the Company is henceforth Rs. 4,90,00,000/- (Rupees Four Crore Ninety Thirteen Thousand and Three Hundred Only) comprising of 49,00,000 (Forty Nine) equity shares of Rs. 10/- (Rupees Ten only) each, reduced from Rs. 67,47,90,000/- (Rupees Sixty- Seven Crore Forty-Seven Lakh Ninety Thousand only) to 49,00,000 (Forty-Nine Lakh) equity shares of Rs. 10/- (Rupees Ten only) each."

16. The pre-mordial plea of the Appellant is that the 'National Company Law Tribunal' had failed to appreciate the creeping in of an 'inadvertent typographical error' figuring in the extract of the 'Minutes of the Meeting' characterising the 'special resolution' as 'unanimous ordinary resolution'. Moreover, the Appellant/Petitioner had fulfilled all the statutory requirements prescribed u/s 114 of the Companies Act and as such the impugned order of the Tribunal is liable to set aside.

17. The Learned Counsel for the Appellant takes a stand that the Tribunal had erred in observing that the Appellant / Company had also not complied with the requirements of its own 'Articles of Association' which had resulted in dismissal of the petition seeking approval of 'Reduction of Share Capital'.

18. On behalf of the Respondents it is represented that the members of the Appellant/Company at the 'Annual General Meeting' that took place on 19.08.2019 among other things resolved that pursuant to Section 66 of the Companies Act, 2013 and subject to other requisite approvals, the paid-up share capital of the Company would reduce from its present level of Rs. 67,47,90,000/- to Rs. 4,90,00,000/-.

19. It transpires that the 'Special Resolution' passed in the 'Annual General Meeting' as filed with the e-form MGT-14 reflects that the resolution passed by the shareholders u/s 67 of the Companies Act, 2013 on 19.08.2019 is a 'Special Resolution' which is taken on record in MCA21 Registry.

20. Continuing further, the Resolution passed in the 'Annual General Meeting' of the Appellant's Company u/s 66 of the Companies Act was found to be in order by the Respondents. Even the report of Registrar of Companies, Delhi found that the Appellant/Company had filed the said resolution keeping in tune with the ingredients of Section 66 of the Companies Act, 2013.

21. Be it noted, that 'Reduction Of Capital' is a 'Domestic Affair' of a particular Company in which, ordinarily, a Tribunal will not interfere because of the reason that it is a 'majority decision' which prevails. The term 'Share Capital' is a 'genus' of which 'Equity and Preference share capital' are 'species'.

22. Section 66 of the Companies Act, 2013 mentions the term 'reduction Of Share Capital'. For a valid resolution, it must satisfy the relevant provisions contained under the Companies Act. A 'special resolution' is required to determine those matters for which the Act requires a 'special resolution' and except these matters in all other situations an 'Ordinary Resolution' is to be passed.

23. It is pertinently pointed out that Section 114(2) of the Companies Act, 2013 enjoins that 'Special Resolution' means a resolution where decision is reached by a special majority of more than 75% of members of a Company voting in person or proxy. In reality, Section 114(2) of the Act applies to all Companies.

24. On a careful consideration of respective contentions and this Tribunal, after subjectively satisfying itself that the Appellant/Company has tacitly admitted its creeping in of typographical error in the extract of the minutes and also taking into consideration of the 1st Respondent's stand that the Appellant/Company had filed the special resolution with it, which satisfies the requirement of Section 66 of the Companies Act, 2013, allows the Appeal by setting aside the impugned order passed by the 'National Company Law Tribunal, Bench V in the Company Petition 149/66/ND/2019, thereby confirming the reduction of share capital of the Appellant Company as resolved by the 'Members' in their 'Annual General Meeting' that took place on 19.08.2019 and further this Tribunal approves the form of Minutes required to be filed with Registrar of Companies,

Delhi u/s 66(5) of the Companies Act, 2013, by the Appellant/Company. No costs. I.A. No. 1575 and I.A.No. 1576/2020 are closed.

[Justice Venugopal. M] Member (Judicial) [Kanthi Narahari] Member (Technical) NEW DELHI
24th August, 2020 ss