

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL

BENGALURU BENCH

I.A. NO. 23/2016 *in T.P. 32/16*

IN

C.P.NO. 70/2011

DATED: FRIDAY THE 16TH DAY OF DECEMBER 2016

**PRESENT: SHRI RATAKONDA MURALI, MEMBER JUDICIAL
SHRI. ASHOK KUMAR MISHRA, MEMBER TECHNICAL**

**IN THE MATTER OF THE COMPANIES ACT, 1956
UNDER SECTION 397/398 OF THE COMPANIES ACT, 1956
AND**

Mr. SATWANG SINGH

Vs

COLUMBIA ASIA HOSPITALS PRIVATE LIMITED

ORDER

This Application is filed on behalf of Applicant Company Columbia Asia Hospitals Private Limited under Regulations 32/2016 of National Company Law Tribunal (NCLT) Rules with a prayer to grant leave to the Applicant Company to raise capital by way of Rights Issue on the basis of letter of offer.

The averments in the Application are summarized hereunder:-

The Applicant Company incorporated under the provisions of the Companies Act, 1956 in the name and style of Columbia Asia Hospitals Private Limited, having Registered Office is situated in Bangalore. The company is engaged in the business of setting up of hospitals in India. The Respondents are shareholders as per shareholders Agreement dated 15th September, 2005.

The Respondents herein are petitioner in the main company petition C.P No.70/2011. It is renumbered as T.P 32/2016.

For purpose of convenience the parties to the petition are referred to and arrayed as they are in this Application. It is averred that the Respondents were inducted as shareholders of the Applicant Company and they are also signatories to the shares subscription and shareholders Agreement dated 15th September 2005 along with Respondent Company and 2 others.

The Applicant is arrayed as 1st Respondent in main company petition. The erstwhile Company Law Board passed order in C.A No.72/2016 dated 10th March 2016 to the effect that Applicant has to take leave from Company Law Board by furnishing letter of offer with disclosure as to purpose/object of issue whenever further Rights Issue of shares to be made. Since Tribunal is constituted, therefore this Application is filed before this Tribunal. Earlier when Applicant Company issued Rights Issue on the offer letter dated 27th March 2013, it was challenged by the Respondents 1 and 2 herein in C.A No.1/2013. The erstwhile Company Law Board decline to grant any interim order, but Respondents 1 & 2 participated in the 1st Rights Issue. The order of the Company Law Board is marked as Annexure-1.

It is also further averred that, the Applicant Company had made 12 further Rights Issue and Respondents 1 and 2 herein participated in all the Rights Issue, but with a qualification 'without prejudice to their rights'. When Applicant Company proposed to go on with Rights Issue basing on the letter of offer dated 1st February 2016 the Respondents 1 and 2 raised objection and filed C.A No.45/2016, but Company Law Board did not interfere in the Rights Issue. However, Respondents 1 and 2 subscribed to the said Rights Issue with a liberty to challenge the Rights Issue in the main Company Petition. The order passed by Company Law Board is marked as Annexure-2. Thereafter, Respondents 1 and 2 moved C.A. 72/2016 and Company Law Board directed that any further Rights Issue would be only with the leave of Board and the same is marked Annexure-3

The Applicant filed C.A No.1/2016 before Company Law Board to seek permission for another Rights Issue basing on the order in C.A No.72/2016 and Company Law Board permitted the Applicant Company to go for Rights Issue. The order of the company Law Board is marked as Annexure-4.

The Board of Directors of the Applicant Company on 4th November 2016 decided to raise a sum of Rs 23,22,06,000/- being the cash requirement to meet the operational expenses including debt servicing by offering for subscription of 1,45,12,875 equity shares of face value Rs 10/- each at a premium of Rs 6/- per share on rights basis to the existing shareholders of the Applicant Company which is in terms of Article II(2) of the Articles of Association of the Company. The draft letter of offer is marked as Annexure-5 and all disclosures were made in the draft

letter of offer which would show the Applicant Company is in need of money. It also contained the capital requirement. The present Rights Issue is sought to meet the bona-fide financial requirement of the Company and it is also in tune with budgetary requirement for the financial year 2016-17. The Respondents 1 and 2 are not being diluted in this process and offered shares in the ration which is being done for the last 12 Rights Issue.

The Respondents 1 and 2 who are petitioner in the main Company Petition filed their objections. The averments in the objection are briefly summarized herein:-

That Applicant Company is in the habit of seeking directions repeatedly for issuing of share capital by Rights Issue. In case Respondents do not subscribe to the Rights Issue their share holding will be fully diluted and on the other hand if Respondents subscribing then the Applicant Company and other Respondents will take advantage.

The Application did not disclose any urgency in the matter but every time Applicant Company was trying to create a story of urgency. No doubt Respondents herein filed C.A No.45/2016 and C.A 72/2016 seeking various reliefs. The present Application is not maintainable when the above 2 Applications are pending.

There are no cogent reasons for raising proposed sum of Rs 23,22,06,000/- The offer letter dated 26th April 2016 was arbitrary revised. In the offer letter dated 1st February 2016, it was mentioned an amount of Rs 65.27 crores was required for acquiring land from the Government of West Bengal for construction of new hospital. So there was proposal to raise capital of Rs.37,42,00,000/-. The Respondents 1 and 2 subscribed to the Rights Issue at that time. An amount of Rs 21,50,00,000 should have been with the company which was earlier raised by issuing Rights Issue.

There is no need to have Rs 58.09 crores for acquiring the land from Government of West Bengal, since proposal was rejected. It is also averred that no amount is required for acquisition of Equity Shareholdings of Navketan Nursing Home Private Limited. Thus there is no urgency in need of raising capital. Further there is no Business plan submitted by the Applicant Company.

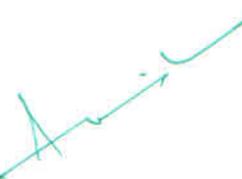
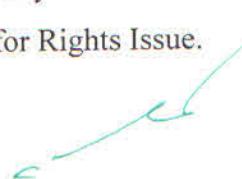
We have heard the Counsels appearing for the parties. Counsel for petitioner would contend that the Applicant Company required money to meet expenditure for acquiring remaining shareholdings of Navketan Nursing Home Private Limited and also for debt servicing. It is contended that the Applicant Company has been going for Rights Issue on several times and that the Respondents were subscribing to the Rights Issue. It is contended that, erstwhile Company Law Board directed the Applicant Company to obtain leave before going for Rights Issue. Therefore, present Application is filed. The offer is also made to the shareholders including to the Respondents. The learned Counsel would further contend that an Affidavit dated 8th December 2016 is filed on behalf of the Company showing the details explaining in detail why Applicant company has to go for Rights Issue.

On the other hand, Counsel for Respondents 1 and 2 (who are petitioner in the main company petition) would contend that there was absolutely no need for the Applicant Company to go for Rights Issue. The present Application is filed with an ulterior motive in order to dilute the shareholding of the Respondents herein. It is also contended that, the Applicant Company failed to explain the reasons for raising share capital except alleging debt servicing and for acquiring remaining shareholdings in Navketan Nursing Home Private Limited.

We have gone through the entire pleadings of the respective parties and also the documents filed by them. Earlier the Company Law Board passed order that, in case Applicant Company whenever goes for Rights Issue then it has to obtain leave from the Board.

Accordingly, present application is filed.

The Applicant Company relied on the order of Company Law Board in C.A 1/2013. Basing on the letter of offer letter dated 27th March 2013, the Respondents have subscribed to the said offer. Applicants also filed copy of the order in C.A 1/2013 marked as Annexure-2. The Applicant Company filed order of Company Law Board in C.A No.72/2016 which is marked as Annexure-3, wherein the Company Law Board directed the Applicant Company to obtain leave whenever it goes for Rights Issue.



The Applicant Company filed order in C.A.No.1/2016 of company Law Board dated 04/11/2016 marked as Annexure-4. Wherein the Company Law Board granted permission to the Applicant Company to go for Rights Issue on the offer letter dated 26th April 2016. The Applicant Company also filed draft offer letter marked as Annexure-5. All details Are given in the offer letter. It is also made clear that WBHIDCO, a Government of West Bengal undertaking, rejected the offer of Applicant Company for allotment of land. It also containing details for acquisition of remaining shareholdings in Navketan Nursing Home Private Limited, Kolkata.

The Applicant Company has shown the requirement in the table given below:-

Table A

(Initial budgeted cash requirement of the company for the FY 2016-17 as per offer of letter dated 26th April 2016)

		Amount in INR Crores
Sl. No.	Particulars	Total Equity Requirement for
1	Requirement towards debt servicing	32.18
2	Requirement towards Projects which are under various stages of construction (Sarjapur road, Pune 2 and Doddaballapura)	11.79
3	Requirement towards Additional Capex Investment in the existing hospitals	5.50
4	Requirement towards payment of lease premium, stamp duty and registration charges for Kolkata Land.	58.09
	Grand Total	107.56



Table B

(Revised cash requirement of the company for the FY 2016-17)

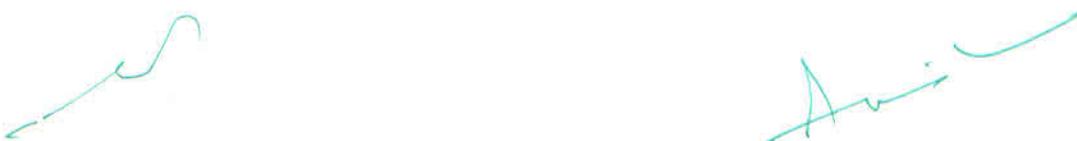
Amount in INR Crores

Sl. No.	Particulars	Total Equity Requirement for
1	Requirement towards debt servicing	32.18
2	Requirement towards Projects which are under various stages of construction (Sarjapur road, Pune 2 and Doddaballapura)	11.79
3	Requirement towards Additional Capex Investment in the existing hospitals	5.50
4	Operational Cash Requirement	4.02
5	Requirement towards acquisition of additional 25.97% equity shareholdings from certain existing shareholders of Navketan Nursing Home Private Limited	26.81
Grand Total		80.30

During the course of arguments it was made clear that there was no dilution in the Right Issue.

The main contention of the Counsel for Respondents that the original requirement for acquiring land from WBHIDCO, a Government of West Bengal undertaking is not materialized as the proposal was rejected by the concerned. The counsel for Applicants would contend that the Board decided not to pursue the allotment of the said land. Proposal was given up and therefore there was no need to incur any expenditure on this item. He also stated that the cash requirement has come down from Rs 107.56 crores to Rs 80.30 Crores. Details of the same are given in the table:-

The overall revised cash requirement to be funded by means of equity for the FY 2016-17	Rs 80.30 crores
Less: The capital infused into the company so far in the FY 2016-17	Rs. 35.58 crores
Balance cash requirement for FY 2016-17	Rs. 44.72 crores
Less: Opening cash available for utilization for the current year	Rs. 21.50 crores
Balance cash requirement for FY 2016-17 now proposed by way of Rights Issue.	Rs. 23.22 crores



The Applicant Company filed affidavit dated 8th December 2016 explaining the details and also the need to go for Rights Issue. The Director, Chief Financial Officer and the Company Secretary filed this Affidavit. The amount is required for debt servicing. The debt servicing obligation as per the latest Audited Balance sheet of the Company as per Affidavit was Rs 50.15 crores for the financial year ending 31st March 2016. The debt servicing for the financial year 2016-17 is Rs 64.62 crores. It is stated that the company has not committed default in any service of its debt obligation to the consortium of Banks.

It is also stated in the affidavit though Applicant Company was successful tenderer but plot was not allotted by the Government of West Bengal and the same was informed in a letter dated 21/06/2016. It is also stated that, the Board of Directors had authorized for acquiring balance of shareholdings in Navketan Nursing Home Private Limited. It is also stated that the Applicants has informed to the concerned regulators as it is downstream investment viz.,

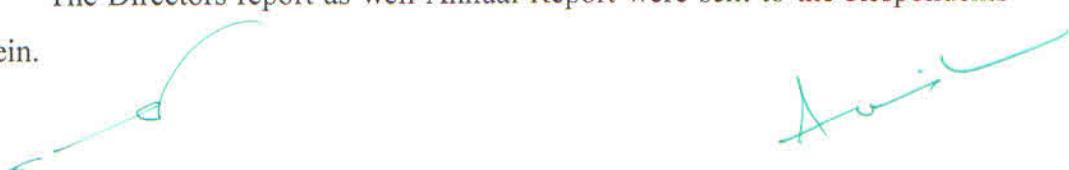
- a) Foreign Investment Promotion Board;
- b) Secretariat for Industrial Assistance and
- c) Department of Industrial Policy and Promotion.

The company has made disclosures to each of the regulators stated above by a separate letter dated 11/07/2016.

In the Directors report also it is specifically stated under the head of **SUBSIDIARIES, ASSOCIATES AND JOINT VENTURE** as follows:

“The company has acquired an additional stake of 25.97% in its subsidiary Navketan Nursing Home Private Limited, by purchasing 8,87,794 shares from its existing shareholders for an amount of Rs 26.81 crores on 30/06/2016. Pursuant to such additional investment, the Company’s shareholding increased to 99.97% in Navketan Nursing Home Private Limited”.

The Directors report as well Annual Report were sent to the Respondents herein.



It is not for first time the Applicant Company was going for Rights Issue, in the past the company did go for Rights Issue. The Applicant Company required money for the purpose which have been stated above. It is clearly stated in the petition that no shares are being allotted to any shareholders either on preferential basing or in any other manner so as to dilute the shareholdings of Respondents 1 and 2.

Since the Applicant Company explained in detail the reason for Rights Issue and filed draft offer letter containing details and disclosures. Then leave can be granted to the Applicant Company to go for Rights Issue basing on the offer letter.

In the result petition is allowed permitting the Applicant Company to go with Rights Issue by observing the provisions of law as laid down and as per the Article II(2) of the Memorandum and Articles of Association to raise capital by way of Rights Issue.

(RATAKONDA MURALI)
MEMBER, JUDICIAL

(ASHOK KUMAR MISHRA)
MEMBER, TECHNICAL

DATED THIS THE 16/12/16 DAY OF DECEMBER, 2016