

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, MUMBAI

C.P No. 11 of 2016

CORAM:

B.S.V. PRAKASH KUMAR
MEMBER (JUDICIAL)

V. NALLASENAPATHY
MEMBER (TECHNICAL)

In the matter of Companies Act, 2013 under Sections 55(3).

AND

M/s. Primus Investments & Finance Pvt. Ltd.

..... Petitioner

PETITIONER

M/s. Primus Investments & Finance Pvt. Ltd.

Present on behalf of the Petitioner:

1. Shri. D.K. Meena, PCS for the Petitioner.

ORDER

(Heard on: 22.08.2016)

(Pronounced on 16.09.2016)

The Petitioner Company M/s. Primus Investments & Finance Pvt. Ltd. (hereafter called as "the Company") has filed this application under Section 55(3) of the Companies Act, 2013 seeking permission of this tribunal to issue further 10% Non-cumulative Redeemable Preference Shares for period of 10 years in lieu of old Preference Shares equal to the amount due on the original 10% Non-cumulative Redeemable Preference Shares on the shares same issues.

Facts of the case:

The Company has stated that it had issued 3,74,400, 10% Non-cumulative Redeemable Preference Shares of Rs. 100/- each fully paid-up on 19.08.1996, which were due for redemption on 18.08.2006, but due to heavy loss incurred by the Company, the said Preference Shares were not redeemed on the above date and the period of redemption was thereafter extended for ten years up to 18.08.2016. It was further averred that due to mounting losses and severe liquidity crunch the Company was unable to pay any dividend to the Preference

Share Holders and unable to redeem the said preference shares as per Section 55 of the Companies Act, 2013. It was further stated that the issue of fresh redeemable preference shares for the purpose of redeeming the old preference shares are not likely to be subscribed by the new investors but the existing preference shareholders have shown their willingness by agreeing to accept new/ fresh 10% non-cumulative redeemable preference shares in lieu of redemption of the existing old preference shares. In this circumstances the Company is seeking the nod of this Tribunal for issue of new 10% Non-cumulative Redeemable Preference Shares in lieu of old preference shares as laid under Section 55(3) of the Companies Act, 2013.

Position of law:

Section 55(3) of the Companies Act, 2013 provides:

"Where a company is not in a position to redeem any preference shares or to pay dividend, if any, on such shares in accordance with the terms of issue (such shares hereinafter referred to as unredeemed preference shares), it may, with the consent of the holders of three-fourths in value of such preference shares and with the approval of the Tribunal on a petition made by it in this behalf, issue further redeemable preference shares equal to the amount due, including the dividend thereon, in respect of the unredeemed preference shares, and on the issue of such further redeemable preference shares, the unredeemed preference shares shall be deemed to have been redeemed.

Provided that the Tribunal shall, while giving approval under this sub-section, order the redemption forthwith of preference shares held by such persons who have not consented to the issue of further redeemable preference shares."

Analysis and Conclusion:

The following is the details of the 10% non-cumulative redeemable preference shareholders as on 26.07.2016, in the Company.

No.	Name of the Preference Shareholders with Address	No. of Preference Shares	Amount	% of total Preference Shareholding
1.	Mukand Global Finance Ltd.	39,000	39,00,000	10.42

	Bajaj Bhavan, 3 rd Floor, 226, Nariman Point, Mumbai: 400 021.			
2.	Adore Builders and Developers Ltd. Bajaj Bhavan, 3 rd Floor, 226, Nariman Point, Mumbai: 400 021.	1,57,400	1,57,40,000	42.04
3.	India Thermal Power Ltd. Bajaj Bhavan, 3 rd Floor, 226, Nariman Point, Mumbai: 400 021.	1,57,400	1,57,40,000	42.04
4.	Shri. Aditi R. Gupta 11, Navjivan Co-op. Hsg. Society, 20 Nepean Sea Road, Mumbai: 400 006.	20,600	20,60,000	5.50
		3,74,400	3,74,40,000	100.00

The Professional appearing on behalf of the Company stated that the Company has sent notice on this Petition filed under Section 55(3) of Companies Act, 2013 to the above four preference shareholders on 21.07.2016 and all the existing preference shareholders have given their "no objection" for the issue of fresh issue of 10% Cumulative Redeemable Preference Shares of Rs. 100 each in lieu of redemption of 10% Non-Cumulative Redeemable Preference shares of Rs. 100 each due for redemption on 18.08.2016.

The Preference shareholders of the Company in the Extra-Ordinary General meeting held on 10.08.2016 have given their consent to the Company for the issue of fresh 3,74,400, -10% Non-Cumulative Redeemable Preference Shares of Rs. 100 each equivalent to the existing 10% Non-Cumulative Redeemable Preference Shares of the Company subject to the compliance of provisions of Section 55 of the Companies Act, 2013 and applicable Rules and Regulations.

In the above stated circumstances, this Bench is of the opinion that this Petition squarely falls under Section 55(3) of the Companies Act, 2013, therefore, this Tribunal hereby approved issual of 3,74,400, 10% Non-Cumulative Redeemable Preference shares of Rs. 100 each for a period of 10 years in lieu of 3,74,400, 10% Non-Cumulative Redeemable Preference Shares on the same terms and conditions drawn in the past.

Accordingly, this Company Petition is hereby allowed.

sd/-

B.S.V. PRAKASH KUMAR

Member (Judicial)

sd/-

V. NALLASENAPATHY

Member (Technical)