

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH

I.A.No.43 of 2017 in TP No.32 of 2016

IN

CP.No.70 of 2011

DATED: THURSDAY THE 18th DAY OF MAY 2017

PRESENT: SHRI RATAKONDA MURALI MEMBER JUDICIAL

IN THE MATTER OF THE COMPANIES ACT, 1956
UNDER SECTION 397/398 OF THE COMPANIES ACT, 1956
AND
Mr. SATWANT SINGH & ANOTHER
Vs
COLUMBIA ASIA HOSPITALS PRIVATE LIMITED & 9 OTHERS


ORDER

This application is filed under Regulation 32 of 2016 of National Company Law Tribunal (NCLT) Rules 2016 with a prayer to permit the Applicant Company Columbia Asia Hospitals Private Limited to raise capital by way of Rights Issue in terms of the draft letter of offer.

It is averred in the application that an order was passed by the then Company Law Board (CLB) dated 10.03.2016 in Company Application No. 72 of 2016 in CP No.70 of 2011 and wherein the applicant was directed to take leave of Company Law Board by furnishing of letter of offer with disclosure as to the purpose / objects of the issue in the event the applicant offers Rights Issue.

It is further averred the Rights Issue was earlier carried out in pursuance of letter of offer dated 27.03.2013. The same was challenged by the Respondents herein before Company Law Board. However, Company Law Board did not pass any interim order on the application of Respondents challenging the Rights Issue in CA 1 of 2013. Further respondents 1 and 2 participated in the first Rights Issue.

It is further stated that Applicant Company has since then made 13 Rights Issue in which respondents 1 and 2 participated and subscribed to the Rights Issue.



It is further averred the Respondents raised objection in respect of Rights Issue pursuant to letter of offer dated 01.02.2016 by filing CA No.45 of 2016. However, Company Law Board did not pass any Interim Order. However, Respondents 1 and 2 participated in the said Rights Issue.

It is further averred Respondents moved CA 72 of 2016 before Company Law Board which passed Interim Order that any further Rights Issue would be with the leave of the Company Law Board (CLB).

It is further averred that Respondents 1 and 2 subscribed to the Rights Issue in pursuance of order dated 10.03.2016 in CA No. 72 of 2016. In CA No.23 of 2016 again this Tribunal permitted the Applicant Company to go for Rights Issue. Further respondents subscribed to be said Rights Issue.

Now the Applicant Company is in need of money as set out in the draft letter for the Financial Year 2017-2018. The Board of Directors of the Applicant Company in the meeting held on 11.04.2017 approved a cash requirement of Rs.128.95 Crores for the Financial Year 2017-2018 to be funded by equity capital by issuance of equity shares to the existing shareholders of the Applicant Company. The details of the estimated requirement is given below:-

In INR -crores

PARTICULARS	Cash requirement for the FY 2017-18
Requirement towards debt servicing	70.81
Requirement towards Projects which are under various stages of construction Sarjapur road (Bangalore), Pune (Baner)	58.14
TOTAL	128.95

The Board of Applicant Company in the meeting held on 22.04.2017 proposes to raise a sum of Rs.89,45,00,000/- (Rupees Eighty Nine Crores Forty Five Lacs only) being immediate cash requirement by offering for subscription 5,67,93,651 equity shares at face value of Rs.10/- each at a premium of Rs.5.75p per share on Rights basis to the existing

shareholders of the Company. The details of estimated utilisation of the funds is shown in the table given below:-

PARTICULARS	Immediate Cash requirement for the period between April 2017-September 2017
Requirement towards debt servicing	37.65
Requirement towards Projects which are under various stages of construction Sarjapur road (Bangalore), Pune (Baner)	42.63
Requirement towards operations	9.17
TOTAL	89.45

It is further averred the company needs funds to meet the operational expenses debt servicing, to meet on going new Hospital Projects and in tune with the budgetary requirements.


The Respondents 1 and 2 it is stated have attended the Annual General Meeting (AGM) for the year ended 31.03.2016. The Annual General Meeting (AGM) was held on 29.09.2016.

It is further averred that the current outstanding debt to the consortium of lenders is Rs.163.22 Crores as a Rupee Term Loan and 20.35 million USD as external Commercial borrowing Loan and Rs.83.14 Crores as over draft in Rupee Term Loan. The debt serving obligation for the year 2017-2018 is Rs.74.90 Crores.

It is further averred the shares of Respondents 1 and 2 are not being diluted in this process as they are offered shares in the ratio that they already hold in the Applicant Company which was being done in all the Rights Issue. No shares are allotted to any shareholder either on a preferential basis or in any manner so as to dilute the shareholder holding of respondents.

Thus, it is prayed to grant leave to the Applicant Company to go for Rights Issue as stated supra.

The respondents 1 and 2 filed objections contending that the application is bereft of any details regarding the exact requirement and the urgency. Therefore, the application deserves to be dismissed.



It is further stated that Applicant Company has failed to show any urgency to go for Rights Issue. It is stated that CA No. 45 of 2016 filed by the Respondents 1 and 2 is still pending seeking for various directions. Further it is alleged the respondents have already filed CA No.2 of 2016 seeking injunction from raising further capital and its pending.

It is further alleged draft offer letter does not contain any convincing reason for the Rights Issue.

It is further alleged that the intention of the Applicant Company is malafide. It is further alleged that there is no reason or emergency or urgency to go for Rights Issue.


The Respondents 1 and 2 further gave details with regard to the various contentions raised by the Applicant Company. It is not necessary to reproduce the explanation given by the Respondents 1 and 2 to the various events referred by the Applicant Company from time to time and finally prayed for dismissal of the application.

In the course of arguments the Learned Counsel for Applicant Company filed valuation of shares certificate issued by Chartered Accountant and that value of equity share of applicant Company was estimated at Rs.15.75pa (having face value of Rs.10/- each NAV as per Professional Financial statement as at 31.3.2017 of Rs.4.03p per share) based on income approach and Discounted Free Cash Flow (DFCF) Method.

The Learned Counsel for Respondents 1 and 2 raised objections that Applicant Company has not filed valuation report and counsel for Applicant Company would contend that it is not necessary in the light of valuation shares certificate issued by Auditor.

I agree with the contentions for Counsel for Applicant the valuation shares certificate issued by auditor is enough and valuation report is not necessary.

As usual the respondents 1 and 2 raised objections for Rights Issue on the same grounds that Company has failed to establish any need for fund raising and also failed to show any urgency, besides contending that intention of the Applicant Company is malafide in seeking for leave for Rights Issue from time to time.



The contention of the Learned Counsel for Application Company that company needs funds to meet operational expenses, debt servicing, to meet on going new Hospital projects and in tune with budgetary estimates.

The contention of the Learned Counsel that the Applicant Company in fact required around 128.95 Crores and details are given in the Table as shown above and Board of Directors approved proposal in the Board Meeting dated 22.04.2017 to raise a sum of Rs.89,45,00,000/- (Rupees Eighty Nine Crores Forty Five Lacs only) and to raise the same to go for Rights Issue 5,67,93,651 equity shares on face value of Rs.10 each at premium of Rs.5.75p.


The Counsel for the Applicant would content that details of immediate cash required is shown in the table cited supra.

The Applicant Company specifically stated in application that Company required immediate funds towards debt servicing towards completion of ongoing projects and operations.

The Applicant Company has also given details regarding debt servicing in para 24 of the application.

It is not in dispute Applicant Company was going for Rights Issue on many occasions. The then Company Law Board allowed the Company to go for Rights Issue. It is also not in dispute Respondents 1 and 2 subscribed to the Rights Issue from time to time. This is not the first time the applicant Company is seeking leave for Rights Issue. In the past Applicant Company was permitted to go for Rights Issue.

Respondents 1 and 2 though minority shareholders have simply denied various contentions raised by the Applicant Company to go for Rights Issue. It is not in dispute Applicant Company is executing certain projects. Therefore money is required to meet expenditure for ongoing projects. Similarly Company required money for debt servicing besides operational expenses. Respondents 1 and 2 simply raised objection that company



does not need money and that there is no urgency. When there is no dispute that company is executing ongoing projects and further company is under obligation for debt servicing then it is a genuine and sufficient ground for company to raise funds by going for Rights Issue. The interest of the Respondents 1 and 2 will not be affected as offer is also made to the respondents being shareholders. Applicant Company clearly stated in the application that there is no allotment of preferential shares or in any other manner to dilute the shareholding of Respondents 1 and 2.

Previously this Tribunal had granted leave to the applicant Company to go for Rights Issue vide order No.I.A 23 of 2016 dated 16.12.2016.


The Applicant Company relied on the order of this Tribunal wherein applicant Company was permitted to go with Rights Issue by observing the Provisions of Law and as per Article II(2) of Memorandum and Articles of Association.

Through this application company is seeking leave to go for Rights Issue of 5,67,93,651 in order to raise money to the tune of Rs.89,45,00,000/- (Rupees Eighty Nine Crores Forty Five Lacs only)

The apprehension of Learned Counsel for Respondents 1 and 2 that Applicant Company may mismanage the amount realised by going for Rights Issue.

The Applicant Company can be directed to maintain a true and correct account with regard to the amount realised by Rights Issue and the expenditure incurred on various items.

Considering the various circumstances and various directions from time to time including the order that was passed by this Tribunal in IA No. 23 of 2016 there is a need to grant leave to the Applicant Company to go for Rights Issue by extending offer to the Respondents 1 and 2.



In the result, I.A. No. 43 of 2017 Application is allowed. Applicant Company is permitted to go for Rights Issue of 5,67,93,651 for raising a fund of Rs.89, 45,00,000/- (Rupees Eighty Nine Crores Forty Five Lacs only) by observing the provisions of Law have laid down as per Article II (2) of Memorandum and Articles of Association and Company is directed to maintain a true and correct account for the amount realised through this Rights Issue.

18/5/17
(RATAKONDA MURALI)
MEMBER, JUDICIAL

DATED THIS THE 18th DAY OF MAY, 2017