

IN THE HIGH COURT OF JUDICATURE OF ANDHRA PRADESH
AT HYDERABAD
(ORIGINAL JURISDICTION)



THURSDAY, THE TWENTY SEVENTH DAY OF DECEMBER
TWO THOUSAND AND TWELVE

PRESENT:
THE HON'BLE SRI JUSTICE SANJAY KUMAR

COMPANY PETITION NO. 160 of 2012
CONNECTED WITH
COMPANY APPLICATION NO. 778 OF 2012

IN THE MATTER OF THE COMPANIES ACT, 1956 (1 OF 1956)
AND
IN THE MATTER OF SECTIONS 391 AND 394 READ WITH SECTION 100 TO
104 AND OTHER APPLICABLE PROVISIONS OF THE SAID ACT
AND
IN THE MATTER OF FOURTH GENERATION INFORMATION SYSTEMS
LIMITED
AND
ITS SHAREHOLDERS AND UNSECURED CREDITORS

M/s. Fourth Generation Information Systems Limited
a Company incorporated under the Companies Act, 1956 having its
registered office at 1st Floor, Society Complex,
MLA's Colony, Road No.12, Banjara Hills,
Hyderabad, Andhra Pradesh, Rep. by its Managing Director
Sri Soma Sekhara Reddy Nallappareddy Chittoor

..... PETITIONER COMPANY

Petition under Sections 391 and 394 Read with Section 100 to
104 of Companies Act, 1956, praying that this High Court may be pleased to
pass an Order

(a) That the scheme of arrangement as consented by the
shareholders of the petitioner company, a copy of which is filed hereto as
Annexure C be sanctioned and confirmed by this Hon'ble High Court of Andhra
Pradesh at Hyderabad so as to binding on all the members, unsecured
creditors, employees of the petitioner company and on the petitioner company.

(b) For an order under section 394 of the Companies Act, 1956
that the petitioner company do within 30 days after the date of order(s), cause a
certified copy to be delivered to the Registrar of Companies, Andhra Pradesh,
Hyderabad for registration and on such certified copy being delivered or on
such date as this Hon'ble High Court of Andhra Pradesh at Hyderabad may
deem fit, the Registrar of Companies, Andhra Pradesh, Hyderabad shall take all
necessary consequential action in respect of the petitioner company.

(c) That the parties of the scheme of arrangement or other
persons interested shall be at liberty to apply to this Hon'ble High Court of

Andhra Pradesh at Hyderabad for any direction that may be necessary in regard to the carrying out the scheme of arrangement.



This Petition coming on for orders upon reading the Company Petition and the affidavit dated 18-08-2012 and filed by Sri Soma Sekhara Reddy Nallappareddy Chittoor, Managing Director of the Petitioner Company herein and upon hearing the arguments of Sri Suryanarayana Yellapantula, Advocate for the Petitioner and Sri Ponnam Ashok Goud, Assistant Solicitor General Appearing in the matter.

THE COURT MADE THE FOLLOWING: ORDER

THE HON'BLE SRI JUSTICE SANJAY KUMAR
COMPANY PETITION NO.160 OF 2012


ORDER

M/s.Fourth Generation Information Systems Limited, Hyderabad, entered into a scheme of arrangement with its shareholders and unsecured creditors for reduction of its share capital. Sanction of this Court under Sections 391 and 394 read with Sections 100 to 104 of the Companies Act, 1956 (for brevity, 'the Act of 1956') is sought for giving effect to the said scheme.

The petitioner company, originally incorporated as a private company, was subsequently converted into a public limited company. Its registered office is situated at Hyderabad, Andhra Pradesh. Its authorized share capital as on 31.03.2012 was Rs.12,95,00,000/- divided into 6,47,50,000 equity shares of Rs.2/- each. The issued, subscribed and paid up capital of the company as on that date was Rs.12,47,34,000/- comprising 6,23,67,000 equity shares of Rs.2/- each.

The main objects of the petitioner company as set out in its Memorandum of Association include, *inter alia*, undertaking, design, development and research of software systems, products and solutions in all areas of application and to set up and run software/hardware training centers, software consultancy, system studies, management consultancy, techno economic feasibility studies of products and to research, design, develop, process, set-up, fabricate and deal with electronic, electrical, software and telecommunication products. The petitioner company has been running in losses for the past five years.





The proviso to Section 391(2) of the Act of 1956 requires a company seeking sanction of a scheme under Section 391(1) to disclose to the Court all material facts relating to it such as the latest financial position, the latest auditor's report of its accounts and pendency against it of any investigation proceedings under Sections 235 to 251 and the like.


The petitioner company filed its audited balance sheet dated 31.03.2012. As per this balance sheet, the petitioner company has no secured loans from any bank or financial institution. It however, availed unsecured loans from its Directors and others to the tune of Rs.1,10,50,000/-. These loans were availed from four individuals viz., Mr.C.N.Somashekara Reddy (Rs.42,00,000/-), Ms.C.N.Sunitha Reddy (Rs.42,00,000/-), Mr.T.Venkatramana (Rs.16,00,000/-) and Ms.Vijaya Kathyayani (Rs.10,50,000/-). Mr.T.Venkataramana, Director, furnished letter dated 17.06.2012 stating that he had gone through the scheme of arrangement and gave his consent thereto. Similarly, Mr.C.N.Somashekara Reddy, Managing Director, filed letter of consent dated 13.06.2012 to the same effect. Ms.C.N.Sunitha Reddy and Ms.Vijaya Kathyayani also addressed letters dated 14.06.2012 and 15.06.2012 respectively signifying their consent to the restructuring of the company through the proposed scheme of arrangement.

'Trade Payables' in the balance sheet dated 31.03.2012 comprises 'Sundry Creditors' and 'Expenses Payable'. The sundry creditors of the petitioner company as on 31.03.2012 stood at Rs.79,29,881/-. The break up of the sundry creditors was furnished. A sum of Rs.29,47,280/- was owed to M/s.Boston Teknowsys (India) Limited, Rs.33,04,852/- was owed to M/s.Aptus



Industries Limited and Rs.16,77,749/- was due to M/s.7 Seas Entertainment Limited. M/s.7 Seas Entertainment Limited furnished letter dated 14.06.2012 stating that, having gone through the scheme of arrangement, it gave its consent thereto. This letter is signed by the Managing Director of the said company and is supported by Resolution dated 24.05.2012 of its Board of Directors authorizing the Managing Director to furnish such a consent letter. Similarly, M/s.Aptus Industries Limited furnished letter dated 11.06.2012 stating that it had gone through the scheme of restructuring of the petitioner company and gave its consent to the same. The letter of the Director of this company is supported by the Resolution dated 14.05.2012 of its Board of Directors authorizing the Director to furnish the consent letter. M/s.Boston Teknowsys (India) Limited also furnished letter dated 13.06.2012 signifying its consent to the scheme of arrangement. This letter was issued by the Managing Director of the said company and was supported by the Resolution dated 11.06.2012 of its Board Directors authorizing the Managing Director to furnish such a consent letter.

As regards the 'Expenses Payable', certificate dated 18.06.2012 of the Chartered Accountant who audited the financial statements of the petitioner company is furnished stating that the outstanding expenses of the petitioner company as on 31.03.2012 stood at Rs.6,07,902/-, comprising Rs.3,03,151/- towards salaries payable, audit fee of Rs.37,500/-, office rent of Rs.80,000/-, office maintenance expenses of Rs.32,462/-, miscellaneous expenses of Rs.38,523/-, printing and stationery of Rs.11,732/-, traveling and conveyance expenses of Rs.31,712/- and legal & professional fees



of Rs.72,822/-. The certificate further confirms that the company had already paid the office maintenance expenses of Rs.32,462/-, miscellaneous expenses of Rs.38,523/-, printing and stationery expenses of Rs.11,732/-, the traveling and conveyance expenses of Rs.31,712/- by cash and had also cleared the salaries and audit fees payable as on that date through cheques. The details of the payment of salaries and audit fees are furnished in a separate confirmation letter dated 20.06.2012. M/s.Northward Projects Private Limited, the landlord of the petitioner company furnished letter dated 19.06.2012 confirming that the petitioner company was due to pay Rs.80,000/- towards four months arrears of rent and that, having gone through the proposed scheme of arrangement, it gave its consent thereto. It further stated that it had no objection for the restructuring of the petitioner company and agreed to abide by the approvals granted by this Court. This letter is supported by the Resolution dated 11.06.2012 passed by the Board of Directors of the said company 'authorizing the Director to furnish such a consent letter.

The company petition was admitted by this Court on 29.08.2012 and notice of the proposed hearing of this petition on 10.10.2012 was directed to be advertised in the Hyderabad editions of Business Standard (English Daily) and Andhra Bhoomi (Telugu daily). Notice was also issued to the Central Government as required by Section 394-A of the Act of 1956.


The advertisement of the petition having been carried out, it is stated that no objections were received. No shareholder/creditor of the petitioner company has come before this Court opposing the scheme. The Regional Director, South Eastern Region, Ministry of

Corporate Affairs, Hyderabad, filed affidavit dated 09.10.2012 stating that as per the report dated 28.09.2012 of the Registrar of Companies, Andhra Pradesh, the petitioner company is regular in filing its statutory returns and no complaints, investigations or inspections are pending against it. He further stated upon examining the scheme, it had been decided not to make any objection thereto.

As the petitioner company is a listed public company on the Bombay Stock Exchange, it obtained letter dated 14.06.2012 from the Bombay Stock Exchange, whereunder it was conveyed that the Stock Exchange had no objection to the proposed scheme with limited reference to those matters having bearing on the listing of the petitioner company within the provisions of the listing agreement. The Stock Exchange however advised the petitioner company to bring the contents of the said letter to the notice of its shareholders, relevant authorities and also in its application to this Court for approval of the scheme.

Prior to filing this petition, the petitioner company filed Company Application No.778 of 2012 before this Court for the purpose of convening a meeting of its equity shareholders for considering the proposed scheme of arrangement. By order dated 28.06.2012, this Court appointed Ms.K.Pallavi, Advocate, as the Chairperson for the meeting to be held on 07.08.2012 in accordance with the directions issued by this Court vide the said order. Having held the said meeting, the Chairperson filed report dated 09.08.2012 stating that the meeting was attended by 30 of the members of the petitioner company in person holding shares of the value of Rs.12,98,562/- divided into 6,49,281 equity shares of





Rs.2/- each and 9 members, through proxies, holding shares of Rs.95,52,236/- divided into 47,76,118 equity shares of Rs.2/- each. Put together, the value of the share holding represented at the said meeting was Rs.1,08,50,798/- divided into 54,25,399 equity shares of Rs.2/- each. Only one shareholder, holding shares of the value of Rs.2,000/- comprising 1,000 equity shares of Rs.2/- each, voted against the proposed scheme of arrangement and the vote of one shareholder, having 300 shares of the value of Rs.600/-, was found to be invalid. Thus, the required majority as per Section 391(2) of the Act of 1956 voted in favour of the scheme.

Clause 56(a) of the Articles of Association of the petitioner company authorizes it, by a special resolution, to reduce its capital by paying of capital or cancelling capital which has been lost or is under represented by available assets or by reducing the liability on the shares or otherwise as it may seem expedient.

The scheme of arrangement which involves such reduction would necessarily have to abide by the requirements prescribed by Sections 100 to 105 of the Act of 1956 and Rules 46 to 65 of the Companies (Court) Rules, 1959.

In the light of the law laid down by this Court in **NOVOPAN INDIA LIMITED, In re. (A.P.)**, **G.V.K. HOTELS LTD., In re.¹**; **SUMITRA PHARMACEUTICALS AND CHEMICALS LTD., In re.(A.P.)²**; **RAASI CEMENT LTD., In re. (A.P.)³**; setting out the intention to move a resolution as a special resolution in the notice to the shareholders is not a mandatory requirement. Failure to comply with this requirement would therefore not invalidate the


¹ (1997) 88 Company Cases 596
² (1997) 88 Company Cases 619
³ (1999) 98 Company Cases 835

resolution. As long as the shareholders were put on notice of the proposed reduction of share capital through the scheme of arrangement which was the subject matter for consideration at the meeting and the same had been read over and explained to the shareholders who were present during the said meeting, there is substantial compliance with Rule 85 of the Companies (Court) Rules, 1959. However, the majority in numbers, as required by Section 189(2) of the Act of 1956, for the passing of a special resolution would have to be satisfied.

In the present case, the meeting of the shareholders convened pursuant to the order of this Court was attended by 39 members representing the share value of Rs.1,08,50,798/- and only one member representing the share value of Rs.2,000/- voted against the scheme. Therefore, the required majority for passing a special resolution was more than adequately fulfilled.

Perusal of the scheme reflects that as the petitioner company was in losses for the past five years with accumulated losses of Rs.12,92,07,766/- as on 31.03.2012 and as there was complete erosion of its net worth, it was not in a position to undertake operations in a reasonable way. It therefore proposed to undertake the restructuring exercise by setting off the loss of Rs.11,22,60,600/- out of the total accumulated losses of Rs.12,92,07,766/- against its paid up share capital of Rs.12,47,34,000/-, resulting in the reduction of Rs.11,22,60,600/- from its paid up capital. Thereby, the issued, subscribed and paid up capital of the company was sought to be brought down to Rs.1,24,73,400/- divided into 6,23,67,000 equity shares of Rs.0.20 paise each. The issued, subscribed and paid up share capital of





the company was to be further restructured into Rs. 1,24,73,400/- divided into 12,47,340 equity share of Rs. 10/- each. Every shareholder of the company as on the record date was to receive one equity share of Rs. 10/- in lieu of every 50 equity shares of Rs. 2/- held earlier. The unsecured loans amounting to Rs. 1,10,50,000/- as on 31.03.2012 were to be converted into equity share capital of Rs. 1,10,50,000/- divided into 11,05,000/- equity shares of Rs. 10/- each. Thereby, the total shareholding was reduced to Rs. 2,35,23,400/- comprising 23,52,340 fully paid up equity shares of Rs. 10/- each. The petitioner company also proposes to issue 11,97,660 equity shares of Rs.10/- each on preferential basis to the identified 21 strategic investors who are all individuals. By such allotment, the petitioner company hopes to get additional funds of Rs.1,19,76,600/-.

The objects/benefits arising out of this restructuring are set out in para 2 of the scheme and speak to the effect that such reduction in capital would enable the company to overcome its financial difficulties and enhance shareholders' value by infusion of fresh funds and increasing of its financial strength. The company was to be revived by these measures, which were not only in the interest of shareholders but also employees and the exchequer. The modalities of the scheme are set out in detail thereafter.


In so far as employees and workers are concerned, clause 14 of the scheme states that the restructuring would not have any adverse impact on the employees/workers of the company and that they would, in fact, be generally benefited by the infusion of fresh funds which would be deployed in the business' operations. Though the company stated in clause 24 of the scheme that the reduction of capital need not be reflected in its name, this aspect requires further examination and will be dealt with hereinafter.



The scheme therefore makes it clear that the restructuring of the company is necessitated by the fact that it is carrying forward its losses for the past five years and its accumulated losses as on 31.03.2012 swelled to Rs.12,92,07,766/-. To offset these losses, the petitioner company now seeks to write off its paid up share capital to the extent of Rs.11,22,60,600/- and restructure the reduced capital of Rs.2,35,23,400/- into 23,52,340 equity shares of Rs.10/- each. The rationale for such restructuring is set out in para 2 of the scheme indicating that the financial resources of the company are to be enhanced for reviving the company. As stated *supra*, the required number of shareholders, present at the meeting held pursuant to this Court's order, ruled in favour of such restructuring.

As pointed out by the Supreme Court in **MIHEER H. MAFATLAL V/s. MAFATLAL INDUSTRIES LTD.**⁴, it is not for the Company Court to sit in judgment or appeal over the wisdom of the shareholders or creditors of the company which is entering into a scheme of arrangement. The Court would only play a supervisory role to protect the interests of the shareholders and creditors to the extent prescribed under the provisions of the Act of 1956. The Court would also ensure that the scheme is not in violation of law and is not contrary to public interest. The petitioner company is a listed company whose shares are traded on the Stock Exchange. To that extent, the scrutiny of this Court would be more stringent in the context of the interest of the general public who are the shareholders of this company. The scheme envisages that the existing shareholders, as on the record date, would receive one

⁴ (1996) 87 Company Cases 792 = (1997) 1 SCC 579



equity share of Rs.10/- for every 50 equity shares of Rs.2/- that they held earlier. This ratio having already been accepted and approved by the requisite number of shareholders, at the meeting of the shareholders held on 07.08.2012, the interest of the shareholders is deemed to have been adequately protected. The petitioner company has no secured creditors and the unsecured creditors have already consented to the scheme as is evident from their letters of consent. Therefore, their interests are also taken care of.

In so far as public interest is concerned, the reduction of paid up capital of the petitioner company appears to be necessary to set off the accumulated losses. The unsecured loans as on 31.03.2012 are also being converted into share capital. By these measures, the petitioner company aims at improving the net worth of the company and enhancing the value of its shares. This restructuring of the petitioner company is therefore for a discernible purpose and an informed decision was made by the shareholders who attended the meeting, in excess of the required numbers, approving the same. The creditors also adopted the same view. It cannot therefore be said to be contrary to their interest.

However, as members of the general public trade in the shares of the petitioner company and as prospective buyers of such shares may not be aware of the restructuring initiated by the petitioner company under the present scheme, involving drastic reduction of its share capital, it would be in their interest to be informed of the fact that the petitioner company has undergone a reduction in this regard and has also restructured its capital by converting its unsecured loans into share capital. To this extent, it



would be in the interest of such future investors that the petitioner company indicate the fact that it has initiated these measures by adding the words '**and reduced**' to its name for at least one full financial year. The petitioner company shall accordingly indicate so, as required by Section 102(2) of the Act of 1956, from the date this sanction order is filed with the Registrar of Companies, Andhra Pradesh, till the end of the financial year 2013-14.

This Court therefore sanctions the subject scheme of arrangement involving reduction of the petitioner company's share capital subject to the condition that the petitioner company adds to its name the words '**and reduced**' for the period upto and until the end of the financial year 2013-14; and also in its balance sheet and profit & loss account and the annexures thereto for the said financial year. A certified copy of this order, including the minute as approved, shall be delivered to the Registrar of Companies, Andhra Pradesh, within 30 days from the date of receipt of this order. Notice of the registration by the Registrar of Companies, Andhra Pradesh, of this order and of the minute shall be published in the Hyderabad editions of 'Business Standard' (English Daily) and 'Andhra Bhoomi' (Telugu Daily) within 14 days of the registration as aforesaid.

ORDER CONFIRMING REDUCTION OF CAPITAL AND APPROVING MINUTE

- i. Upon the petition of M/s. Fourth Generation Information Systems Limited, Hyderabad, presented on the 18th day of August, 2012, upon hearing Sri Y. Surya Narayana, Advocate appearing for the Petitioner Company, and upon reading the said petition and the affidavit in support thereof filed on the 18th day of August, 2012 and the exhibits therein referred to, the order on the summons made on the 28th day of June, 2012 in C.A. No. 778 of 2012 convening the meeting of the equity shareholders of the Petitioner Company, the report of the Chairperson appointed for the meeting of the equity shareholders of the Petitioner Company, upon perusing 'Business Standard' and 'Andhra Bhoomi' (Hyderabad

Editions) containing the notice of the date of hearing of this petition, and the Court being satisfied with respect to every creditor entitled to object to the reduction that either his consent to the reduction has been obtained or his debt or claim has been discharged or has determined;

THIS COURT DOTH ORDER:

1. That the reduction of the share capital of the above company resolved on and effected by the special resolution passed at the court convened meeting of the Petitioner Company held on the 7th day of August, 2012, which resolution was in the words and figures following viz:

"RESOLVED THAT pursuant to Section 391-394 read with Section 100 to 104 and other applicable provisions of the Companies Act, 1956, the proposed Scheme of Arrangement of M/s. Fourth Generation Information Systems Limited, Hyderabad, and its respective shareholders and unsecured creditors, a copy whereof is placed before this meeting, duly initialled by the Chairperson for the purpose of identification be and is hereby approved and the Board of Directors of the company or any one of the person(s) authorized by the Board in this behalf be and is hereby authorized to do all such acts, deeds and things as are required for giving effect to the said scheme of arrangement and also to assent to such modifications and conditions as may be imposed by the Hon'ble High Court of Andhra Pradesh at Hyderabad in sanctioning the said scheme of arrangement."


be and the same is hereby confirmed.

2. That the minute set forth in the schedule hereto be and is hereby approved.
3. That a certified copy of this order including the minute as approved be delivered to the Registrar of Companies, Andhra Pradesh, within 30 days from the date of receipt of the order.
4. That notice of the registration by the Registrar of Companies, Andhra Pradesh, of this order and of the said minute be published once each in 'Business Standard' and 'Andhra Bhoomi' (Hyderabad Editions) within 14 days of the registration as aforesaid.

Note - The sanction is subject to the condition that the petitioner company adds to its name the words '**and reduced**' for the period upto and until the end of the financial year 2013-14; and also in its balance sheet and profit & loss account and the annexures thereto for the said financial year.

Dated this, the

day of December, 2012



SCHEDULE
IN THE HIGH COURT OF JUDICATURE OF ANDHRA PRADESH
AT HYDERABAD
(ORIGINAL JURISDICTION)
IN THE MATTER OF THE COMPANIES ACT, 1956
AND
IN THE MATTER OF FOURTH GENERATION INFORMATION
SYSTEMS LIMITED
COMPANY PETITION NO. 160 OF 2012

The issued, subscribed and paid up capital of M/s. Fourth Generation Information Systems Limited, Hyderabad is presently Rs.2,35,23,400/- comprising 23,52,340 fully paid up equity shares of Rs.10/- each. The petitioner company will issue and allot 11,97,660/- equity shares of Rs.10/- each to the identified 21 strategic investors aggregating to Rs.1,19,76,600/-. Upon such issue and allotment, the issued, subscribed and paid up capital of the petitioner company would come to Rs.3,55,00,000/- divided into Rs.35,50,000 equity shares of Rs.10/- each, reduced from the issued, subscribed and paid up capital of Rs.12,47,34,000/- comprising 6,23,67,000 equity shares of Rs.2/- each."

The name of the company shall henceforth be 'M/s. Fourth Generation Information Systems Limited, Hyderabad (and reduced)' for the period upto and until 31.03.2014; and shall be so reflected in its balance sheet and profit and loss account and the annexures thereto for the financial year ending 31.03.2014.

The company Petition is accordingly ordered.

Note: This order is amended and corrected as per the direction of the Hon'ble Court dated: 04.01.2013 in Company Application No. 9 of 2013. This order shall be substituted for the earlier order dated: 27.12.2012

SD/- T.LAKSHMI HEMALATHA
JOINT REGISTRAR

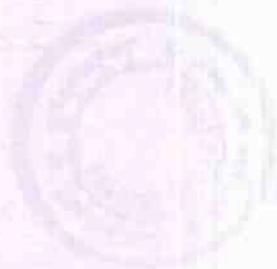
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SECTION OFFICER

To

1. Sri Soma Sekhara Reddy Nallappareddy Chittoor, Managing Director, M/s. Fourth Generation Information Systems Limited registered office at 1st Floor, Society Complex, MLA's Colony, Road No.12, Banjara Hills, Hyderabad, Andhra Pradesh.
2. The Official Liquidator, High Court of A.P., Hyderabad, Office at 5-4-400, II Floor, Gagan Vihar, Opp. Gandhi Bhavan, Nampally, Hyderabad.
3. The Registrar of Companies, 3-5-398, C.P.W.D. Buildings, Kendriya Sadan, Sultan Bazar, Koti, Hyderabad.
4. The Regional Director, South Eastern Region, Ministry of Corporate Affairs, Hyderabad, Office at II Floor, 3-5-398, C.P.W.D. Buildings, Kendriya Sadan, Sultan Bazar, Koti, Hyderabad.
5. One CC to Sri Y.Surya Narayana, Advocate (OPUC)
6. The Section Officer, O.S. Section, High Court of A.P., Hyderabad.
7. 2 C.D.Copies.

23/1/13
SUPERINTENDENT
COPIST DEPARTMENT
High Court of A. P.
HYDERABAD.



GOVERNMENT OF ANDHRA PRADESH

SECRETARY

TELEPHONE

DEPARTMENT

OFFICE

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GOVERNMENT OF ANDHRA PRADESH
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[Signature]
Section Officer