

**IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH**

C.P. No.149/BB/2020
U/s 55 of Companies Act, 2013
R/w Rule 69 of NCLT Rules, 2016

In the matter of:

**M/s. Indiana Hospital and
Heart Institute Limited**

Rep. by Dr. Yusuf Aramanayil, MD
Mahaveer Circle, Pumpwell,
Kankanady Post, Mangalore,
Karnataka – 575 002.

- Petitioner

Versus

Ministry of Corporate Affairs

Rep. by ROC, Bangalore
'E' Wing, 2nd Floor,
Kendriya Sadan, Koramangala,
Bangalore – 560 034.

- Respondent

Order Pronounced on: 28th May, 2021

Coram: 1. Hon'ble Shri Rajeswara Rao Vittanala, Member (Judicial)
2. Hon'ble Shri Ashutosh Chandra, Member (Technical)

Parties/Counsels Present (Through Video Conferencing):

For the Petitioner : Mr. Nebil Nizar, Advocate

For the Respondent : --

ORDER

Per: Ashutosh Chandra, Member (Technical)

1. C.P. No.149/BB/2020 is filed by M/s. Indiana Hospital and Heart Institute Limited (hereinafter as 'Petitioner') under Section 55 of the Companies Act, 2013 read with Rule 69 of the National Company Law Tribunal Rules, 2016, by *inter alia* seeking to allow the Petitioner to extend the tenure of 5% Redeemable Cumulative Preference Shares for a period of two years by issue



of further 5% redeemable cumulative preference shares in lieu of old preference shares equal to the amount due on the original 5% redeemable cumulative preference shares.

2. Brief facts of the case, as mentioned in the Petition, are as follows:

- (1) M/s. Indiana Hospital & Heart Institute Limited, the Petitioner herein, is a Company incorporated under the Companies Act, 1956 on 01.02.2010 with CIN: U85110KA2010PLC052336 and having its registered office at Mahaveer Circle, Pumpwell, Kankanady Post, Mangalore, Karnataka-575002.
- (2) The Authorised Share Capital of the Company is Rs.60,00,00,000 divided into 5,58,00,000 Equity Shares of Rs.10 each, 3,70,000 5% Redeemable Cumulative Preference Shares of Rs.100 and 50,000 5% Convertible Preference Shares of Rs.100 each. The Paid-up Capital of the Company is Rs.51,22,23,960 divided into 4,86,57,396 Equity Shares of Rs.10 each, 2,53,500 5% Redeemable Convertible Preference Shares of Rs.100 and 3000 5% Convertible Preference Shares of Rs.100 each. It is *inter alia* engaged in the business to own, establish, run, manage and maintain, hospitals super specialty hospitals in various medical sciences including research centres, nursing homes, health centers, rehabilitation centers, clinic, polyclinics, laboratories, etc.
- (3) It is stated that Articles 38 to 44 of the Articles of Association provides for the Petitioner Company with the power, among others, to alter capital clause including the power to modify the rights and privileges attached to any class of the shares of the Petitioner Company.
- (4) As per the provisions contained in the Articles of Association, the Company, on 01.12.2010, 06.12.2010, 10.12.2010, 17.01.2011 and 14.02.2013 issued 2,53,500 numbers of, 5% Redeemable Cumulative Preference Shares of Rs.100 each. The said shares are due for redemption after 10 years from the date of issue.



(5) As per proviso (a) to Clause (2) of Section 55 also read with Section 48 of the Companies Act, 2013, Preference Shares can be redeemed only out of:

- i. Profits of the Company which would otherwise be available for dividend or
- ii. Out of the proceeds of a fresh issue of shares made for the purposes of such redemption.

(6) It is further stated that the Company anticipating the normal growth rate as achieved in the previous years distributed all its reserves in the AGM held in the year 2018 by paying off the arrears of accumulated dividend to the Preference Shareholders of the Petitioner Company. Thereafter, the Company declared and paid final dividend on 12.09.2019 for the financial year 2018-19 to both the Equity and Preference Shareholders of the Company. The Company also declared and paid interim dividend on 13.03.2020 for the period 2019-20 to both the Equity and Preference Shareholders of the Company. The Company was under the impression that it would be able to raise the required amount for the redemption of the 5% Redeemable Cumulative Preference Shares falling due on October, 2020 to January, 2023, both out of the profits of the Company and from the proceeds of the fresh issue of the shares of the Company.

(7) Subsequently, due to the unexpected spread of Covid-19 Pandemic since March, 2020 across the country and related general economic slowdown and fall in the business, the Company is not in a position to mobilize the funds via further issue of shares. Sudden spread of Covid-19 Pandemic affected the normal operations of the Petitioner Company and it could not generate enough profits as envisaged by the Board and the Company. These unanticipated events compelled the management to initiate the provisions of Section 55(3) r/w Section 48 for extending the tenure of existing Preference Shares by a further period of 2 (Two) years. The Board and the Company believes that the current situation can be well managed by invoking Section 55(3) r/w Section 48 in respect of extending the redemption of Preference Shares for a period of two years.



- (8) It is also stated that the Company at its Board Meeting held on 03.04.2020 consented to extend the tenure of the 5% Redeemable Cumulative Preference Shares by a further period of two years subject to the approval of the Members. Further, the Extraordinary General Meeting of the 5% Redeemable Cumulative Preference Shareholders held on 26.06.2020 has also consented to extend the tenure of the 5% Redeemable Cumulative Preference Shares by a further period of two years.
- (9) It is stated that all the 16 shareholders holding 33.13% of 5% Redeemable Cumulative Preference Shares who attended the meeting, unanimously consented to the extension of the said tenure. Copies of the Resolutions have been placed on record as Annexure-III & IV.
- (10) Further, the Company is willing to pay the dividend for the extended period at the existing rate and stated that no hardships shall accrue to the Preference Shareholders due to the proposed action.
3. The Registrar of Companies, Karnataka, has filed a report, dated 13.01.2021, by *inter alia* stating as under:
- (1) The Petitioner Company was incorporated on 01.02.2010 and has filed statutory returns up to the financial year ending 31.03.2019 and all the said forms are taken on record.
- (2) As per Section 55(2) of the Companies Act, 2013, a Company can issue redeemable preference shares for the maximum period of 20 years. Further, Articles 38 to 44 of Articles of Association of the Petitioner Company provides for Variation of rights and Redemption of Preference Shares.
- (3) The Petitioner Company had issued in total 2,53,500 5% Redeemable Cumulative Preference Shares of Rs.10 each on 01.12.2010, 06.12.2010, 10.12.2010, 17.01.2011 and 14.02.2013. As per the Petition, as on 31.03.2019, there are 83 Preference Shareholders holding 2,53,500 5% Redeemable Cumulative Preference Shares in the Company. The said shares are due for redemption after 10 years from the date of issue. Due to the sudden spread of Covid-19 pandemic, the normal operations of the

Petitioner Company are affected and it could not generate enough profits as envisaged and thus compelled the management to invoke the provisions of Sec. 55(3) r/w Sec.48 of the Companies Act, 2013, by extending the tenure of existing preference shares by further period of two years by issue of further 5% Redeemable Cumulative Preference Shares in lieu of old Preference Shares equal to the amount due on the original 5% Redeemable Cumulative Preference Shares. Besides, the Company is also having 3000 5% Convertible Preference Shares of Rs.100 each. There is no increase or decrease in paid-up capital of the Company as a result of extension.

- (4) The Petitioner Company has also filed the Resolution in e-form No.MGT-14 vide SRN R48054977 dated 31.07.2020.
- (5) It is noticed from the Petition that the Company has not obtained the approval of 5% Redeemable Cumulative Preference Shareholder with 3/4th of the shareholders of the particular class u/s 48(1) r/w 55(3) of the Companies Act, 2013. As per both provisions, the approval of preference shareholders with 3/4th in value of such preference shareholders is mandatory in nature. However, as per the resolution dated 26.06.2020 of the preference shareholders, it is noticed that only 16 preference shareholders attended the meeting with 33.13% voting rights only, out of total 83 preference shareholders. Hence, the Petitioner Company may be asked to submit the proof of service of Notice of the EGM to all the Preference Shareholders and the details of the dissenting shareholders/ NOCs be received.
- (6) Further, the Company has not obtained approval of Equity Shareholders and 5% Convertible Preference Shareholders of the Company with 3/4th majority as per proviso to Section 48(1) of the Companies Act, 2013, as the rights attached to the equity shareholders and 5% Convertible Preference Shareholders would get adversely affected by extending tenure of the 5% Redeemable Cumulative Preference Shareholders as they are entitled for cumulative dividend. No such resolution copy was attached with the Petition. Hence, the Petitioner Company may be directed



to submit the proof of passing resolutions and filing of such resolutions with the ROC, Karnataka.

- (7) As per proviso to sub-section (2) of 48 of the Companies Act, 2013, the application to the Tribunal shall be made within 21 days of passing resolution for getting approval of NCLT with regard to extension of tenure for Redeemable Cumulative Preference Shares. The Company has passed resolution for extension on 26.06.2020, but the application was filed only on 01.08.2020. Further, no prosecutions, complaints, technical scrutiny and inspection are pending with this office.
4. Heard Mr. Nebil Nizar, learned Counsel for the Petitioner, through Video Conferencing. We have carefully perused the pleadings of the Parties and extant provisions of Companies Act, 2013 and the Rules made thereunder.
5. This is a Petition filed u/s 55 of the Companies Act, 2013 seeking to allow the Petitioner to extend the tenure of 5% Redeemable Cumulative Preference Shares for a period of two years by issue of further 5% redeemable cumulative preference shares in lieu of old preference shares equal to the amount due on the original 5% redeemable cumulative preference shares.
6. Upon issue of notice to the ROC Karnataka on 01.12.2020 being the Respondent herein, the ROC in its report has *inter alia* pointed out that as per the provisions of Sec. 48(1) r/w 55(3) of the Companies Act, 2013, the approval of Preference Shareholders with 3/4th in value of such preference shareholders is mandatory in nature. However, as per Resolution dated 26.06.2020 of the preference shareholders, it is noticed that only 16 preference shareholders attended the meeting with 33.13% voting right only, out of total 83 preference shareholders. It further pointed out that the Company has not obtained approval of the Equity Shareholders and 5% Convertible Preference Shareholders of the Company with 3/4th majority as per proviso to Sec. 48(1), as the rights attached to the Equity Shareholders and 5% Convertible Preference Shareholders would also get adversely affected by extending tenure of the 5% Redeemable Cumulative Preference Shareholders as they are entitled for cumulative dividend.

7. In response to the said observations, a query was raised to the Petitioner asking why the Petition should not be rejected since the required percentage is lower than prescribed in the aforesaid provision. In response to the said query, Mr.Nebil Nazar, learned Counsel for the Petitioner, that the consent of the remaining shareholders have been obtained. He has filed a Memo dated 04.03.2021, in which the list of shareholders in different categories as well their consent letters are annexed, the brief of which is under:

Sr. No.	Category of Shareholders	Total No. of Shares issued	Price for each Share (Rs.)	Consents received (as % of Shares issued)
1.	Equity Shareholders	4,86,57,396	10	78.92
2.	5% Redeemable Cumulative Preference Shareholders	2,53,500	100	78.64*
3.	5% Convertible Preference Shareholders	3,000	100	100.00

*includes consents received and also approval given by its Shareholders in the said EGM.

8. It is seen that the Petitioner Company has obtained the approval of 5% Redeemable Cumulative Preference Shareholder with 3/4th of the shareholders of the particular class u/s 48(1) r/w 55(3) of the Companies Act, 2013 achieving 78.64 %. The other category of shareholders who may be impacted by the prayer for extension of the period of redemption by two years by issue of fresh shares have also given their consent, as above.
9. In view of the reasons cited, namely the spread of the Covid 19 pandemic, and the resulting economic slowdown, leading to the Company's inability to mobilize funds, we are of the considered view that the Petition deserves to be allowed. This is in line with our stance of taking a liberal view of matters in this pandemic period, to promote the Government's initiatives of ease of doing business, and in the interest of equity and justice.
10. In view of the foregoing, C.P. No.149/BB/2020 is disposed of by allowing the prayer therein, to extend the tenure of 5% Redeemable Cumulative Preference Shares for a period of two years by issue of further 5%



redeemable cumulative preference shares in lieu of old preference shares equal to the amount due on the original 5% redeemable cumulative preference shares. The Petitioner is directed to place a copy of this order before the Registrar of Companies, Karnataka, within a period of 30 days from the date of this order.



ASHUTOSH CHANDRA
MEMBER, TECHNICAL

Krishna



RAJESWARA RAO VITTANALA
MEMBER, JUDICIAL