

(2009) 01 KAR CK 0002
In the Karnataka High Court
Case No : Company Petition No. 134 of 2008
In Re: Indo Nissin Foods Ltd.

Date of Decision : 28-01-2009

Acts Referred:

Companies Act, 1956 — Section 100, 101, 189

Citation : (2009) 150 CompCas 275 : (2010) 97 SCL 132

Hon'ble Judges : Mohan Shantanagoudar, J

Bench : Single Bench

Advocate : A. Murali, P.K. Arjun, M and C Partners, for the Appellant;

Judgement

Mohan Shantanagoudar, J.—The petitioner-company was incorporated on August 9, 1988, under the provisions of the Companies Act, 1956, as a company limited by shares. The registered office of the petitioner-company is situated at Centenary Building, Third Floor, 28, Mahatma Gandhi Road, Bangalore-560 001.

2. The main objects of the petitioner-company are to manufacture, produce, process, prepare, preserve, refine, can, bottle, buy, sell and deal, whether as wholesalers or retailers or as exporters or as principals or agents, in all kinds of food articles including instant foods, spices and condiments, to buy, sell and deal whether as wholesalers or retailers or as exporters or importers or as principals or agents, in packaging materials and containers of every description suitable for human consumption, etc.

3. The memorandum of association is produced at annexure B to the petition.

4. The authorised share capital of the petitioner-company is Rs. 75,00,00,000 divided into 7,50,00,000 equity shares of Rs. 10 each, of which, 6,97,50,000 equity shares have been issued and have been fully paid-up credited as fully paid-up. The copy of the balance-sheet as on December 31, 2007, is produced at annexure C to the petition.

5. The board of directors of the petitioner-company in its meeting held on December 5, 2008, resolved to the effect that from the accumulated losses of Rs. 52,67,81,833 as on December 31, 2007, a sum of Rs. 52,31,25,000 be adjusted

against the subscribed and paid-up equity share capital of Rs. 69,75,00,000 and accordingly the paid-up capital be reduced to that extent. Certified copy of the resolution passed by the board of directors is produced at annexure D to the petition.

6. The production will be affected by reducing the paid-up value of each equity share in the subscribed and paid-up equity share capital of the company by cancellation of an amount of Rs. 7.50 out of Rs. 10 being the paid-up value of each equity share and after such cancellation every 4 equity shares of Rs. 2.50 will be consolidated into 1 share of Rs. 10 each credited as fully paid-up and there will be no reduction in the nominal value of a share of Rs. 10. The reduced paid-up capital will accordingly be Rs. 17,43,75,000 consisting of 1,74,37,500 equity shares of Rs. 10 each.

7. Regulation 46 of Table A of Schedule I of the Act adopted by the company in its articles of association provides that the company may from time to time by special resolution reduce its capital in any manner permitted by law.

8. It seems the company has incurred loss in the past years, as a result of accumulated losses, the company's subscribed and paid-up equity share capital has eroded and wiped out to the extent of the accumulated losses and is lost and unrepresented by available assets of the company. This has an adverse effect on the company's financial position as reflected in its balance-sheet and has also been proving to be an impediment for the company's progress since it creates a negative image of the company in the minds of bankers, suppliers and others.

9. By the special resolution of the company, duly passed in accordance with Section 189 of the Act, in an extraordinary general meeting held on December 16, 2008, it is resolved to approve the reduction of the subscribed and paid-up equity share capital of the company as outlined in the scheme. Copy of the resolution passed in extraordinary general meeting is produced along with the petition vide annexure E.

10. While entertaining this company petition, the petitioner was permitted to take out notice in The Hindu and Kannada Prabha daily newspapers on or before January 5, 2009 and the date of hearing was indicated as January 28, 2009. The paper publications were made on December 31, 2008. It is relevant to note that by an order dated December 9, 2008, in C. A. No. 1149 in C.P. No. 134 of 2008, the settlement of list of creditors of the petitioner-company was dispensed with.

11. In spite of the publication of notice, no person has approached the court opposing the resolution passed in the extraordinary general meeting.

12. From the aforesaid facts, it is clear that the company has incurred losses in the past years. The total amount in such accumulated losses in the latest audited balance-sheet of the company as on December 31, 2007, is Rs. 52,67,81,833 against the subscribed and paid-up share capital of Rs. 69,75,00,000. As a result of the accumulated losses, the company's subscribed and paid-up share capital

has eroded and wiped out to the extent of accumulated losses. This has an adverse effect on the company's financial position as reflected in its balance-sheet and the same has acted as an impediment to the company's progress. With a view to bring the balance-sheet consistent with the reality, the board of directors of the petitioner-company decided to reduce the company's subscribed and paid-up equity share capital by an amount of Rs. 52,31,25,000 being a part of the amount of accumulated loss of Rs. 52,67,81,833 as appearing in the audited balance-sheet as at December 31, 2007. The proposed reduction of paid-up share capital will not prejudice the rights of any of the creditors of the company in any manner whatsoever. As aforementioned the action of the board of directors was approved in the extraordinary general meeting of the shareholders. No shareholder has opposed the said action.

13. In view of what is stated above, I am of the view that the resolution passed by the board of directors is for the benefit of the company, its shareholders and the same is not contrary to law. Hence, I pass the following order:

The reduction of share capital of the petitioner-company, resolved on and effected by a special resolution passed in the extraordinary general meeting of the company held on December 16, 2008, at the registered office of the petitioner-company, is hereby confirmed.

The resolution passed in the said meeting was in the words and figures as under : "Resolved that-Pursuant to the authority conferred on the company by Article 46 of Table A in Schedule I to the Companies Act, 1956; and

In accordance with Section 100 of the Companies Act, 1956, and Subject to confirmation of the hon"ble High Court of Karnataka, the members of the company in extraordinary general meeting approve the reduction of the subscribed and paid-up equity share capital of the company as outlined in the explanatory statement annexed to this notice, with the specific approval being given to the following:

(a) the reduction of capital will be of an amount of Rs. 52,31,25,000 (rupees fifty two crores thirty one lakhs and twenty five thousand only) being part of the amount of accumulated loss of Rs. 52,67,81,833 (rupees fifty two crores sixty seven lakhs eighty one thousand eight hundred and thirty three only) as appearing in the audited balance-sheet as at December 31, 2007 and to be effective from December 30, 2008 ;

(b) the reduction will be carried out after the reduction is confirmed by the hon"ble High Court of Karnataka u/s 101 of the Act;

(c) the amount of capital so reduced will be applied for writing off the accumulated losses to the extent of such amount ;

(d) the reduction will be effected by reducing the paid-up value of each equity share in the subscribed and paid-up equity share capital by cancellation of an amount of Rs. 7.50 out of being the paid-up value of each equity share;

(e) after such cancellation, the equity shares with the reduced paid-up value will be consolidated into one equity share of the paid-up value of Rs. 10 that is fully paid-up ;

(f) there will be no reduction in the nominal value of a share of Rs. 10 ; and

(g) any fractions arising in the consolidation process will be consolidated and will be in the control of the board of directors who may dispose of the same and the proceeds will be distributed to the concerned shareholders in proportion to their fractional entitlement.

Resolved further that the board of directors of the company be and is authorised to apply to the High Court of Karnataka seeking its sanction to the above reduction in terms of Section 101 of the Companies Act, 1956 and other applicable provisions of the Act and to appoint advocates and do all such act, deeds and things as may be necessary for obtaining the order of the High Court to the reduction of capital in terms of this resolution.

The said resolution is hereby confirmed.

The minutes set forth in the schedule here to is approved.

14. A certified copy of this order including the minutes as approved be delivered to the Registrar of Companies within 21 days from the date of receipt of this order.

15. The notice of the registration by the Registrar of Companies of this order and the said minutes be published once each in The Hindu and Kannada Prabha, daily newspapers, within 14 days of the registration aforesaid.

Schedule

The paid-up equity share capital of Indo Nissin Foods Ltd., is henceforth Rs. 17,43,75,000 consisting of 1,74,37,500 equity shares of Rs. 10 each reduced from Rs. 69,75,00,000 consisting of 6,97,50,000 equity shares of Rs. 10 each, to take effect from December 30, 2008. At the date of registration of this minute 1,74,37,500 equity shares of Rs. 10 each have been issued and are deemed to be fully paid. Any fractions arising in the consolidation process will be consolidated and will be in the control of the board of directors of the company who may dispose of the same and the proceeds will be distributed to the concerned shareholders in proportion to their fractional entitlement.

16. The petition is disposed of accordingly.