

(2010) 01 KAR CK 0080
In the Karnataka High Court
Case No : Company Petition No. 92 of 2009
In Re: Loop Mobile Holdings India Ltd.

Date of Decision : 07-01-2010

Acts Referred:

Companies Act, 1956 — Section 100

Citation : (2010) 100 SCL 37

Hon'ble Judges : Ram Mohan Reddy, J

Bench : Single Bench

Advocate : Y.D. Harsha, for the Appellant;

Judgement

Ram Mohan Reddy, J.—The petitioner, a company originally incorporated on 31-12-1993 in the State of Karnataka under the name Tangelo Securities Private Limited, changed its name to BPL Cellular Holdings Limited, by a fresh certificate of incorporation dated 1-6-1995 and yet again to BPL Communications Limited on 14-7-2000 and thereafter to the present name i.e. Loop Mobile Holdings India Limited, on 21-5-2009, by securing the fresh certificate of incorporation. The address of the registered office of the petitioner-company (for short "Transferee Company"), is as shown in the cause-title.

2. The Transferee-Company is engaged in the promotion of cellular mobile telephony ventures, amongst other objects as set out in the memorandum and articles of association Annexure "A".

3. The authorised share capital as on 31-3-2008 is Rs. 23,20,00,00,000 comprising 2,32,00,00,000 equity shares of Rs. 10 each and Rs. 1,80,00,00,000 constituting 1,80,00,000 Redeemable preference shares of Rs. 100 each totalling to Rs. 25,00,00,00,000. The issued, subscribed and paid-up share capital is Rs. 22,73,09,50,070 comprising of Rs. 20,97,24,00,070 and Rs. 1,75,85,50,000 representing equity shares of Rs. 10 each and 1 per cent Redeemable Preference Shares of Rs. 100 each respectively.

4. The Balance Sheet as on 31-3-2008 duly audited by the auditors of the Transferee-Company Annexure-"D", discloses its assets and liabilities including

accumulated loss of Rs. 4,82,50,56,535.

5. M/s. Santa Trading Private Limited (for short "Transferor-Company"), was incorporated on 10-3-1994 in the State of Maharashtra in the name of Atul Bhagvat Trading Private Limited, later on changed to the present name pursuant to a fresh Certificate of Incorporation dated 21-5-2005. The Transferor-Company is said to be an investing company, with the main objects to carry on business of traders, dealers, distributors and others, as set out in the Memorandum and Articles of Association Annexure-"E".

6. The issued, subscribed and paid-up share capital is Rs. 1 lakh. The unaudited Balance-Sheet of the Transferor-Company as on 31-12-2008 Annexure-"F" discloses investment in 1,84,77,82,007 equity shares of Rs. 10 each fully paid up of the Transferee-Company valued (unquoted) at Rs. 14,16,57,73,598 and preference shares of 1,75,85,500 of Rs. 100 fully paid-up of value Rs. 1,75,85,50,000 totalling to Rs. 15,92,43,23,598.

7. The Board of Directors of the Transferee Company and the Transferor-Company, in their respective meetings held on 29-12-2008, approved the scheme of arrangement and amalgamation Annexure-"K" whereunder the Transferor-Company holding approximately 88 per cent of the total issued and paid-up equity share capital of the Transferee-Company being the only investment-reflected in its Balance-Sheet, proposed the reducing of the layers of shareholding result in a clear shareholding pattern which as a consequence would wipe out accumulated losses of the Transferee Company. Upon the sanction of the scheme, it is stated that the entire undertaking of the Transferor-Company shall stand vested in the Transferee-Company and the Transferor-Company shall stand dissolved without being wound up and the shares of the Transferor-Company shall stand cancelled. The net result of the amalgamation and the arrangement would result in wiping out of a portion of the accumulated losses of the Transferee-company as on 31-12-2008 by reducing its share capital of Rs. 20,97,24,00,070 to Rs. 18,47,89,53,970.

8. Article 19 of the Articles of Association of the Transferee-Company empowers the company to reduce its share capital in accordance with the provisions of the Companies Act. The Board of Directors of the Transferee-Company convened the extraordinary General Meeting of its shareholders on 7-3-2009, whence it was unanimously resolved in terms of Clause 7 of the Scheme of Arrangement as approved by the shareholders of the Company, the merger of Santa Trading Private Limited the Transferor-Company with the Transferee-Company in accordance with Section 100 and other applicable provisions of the Act, read with Clause 19 of the Articles of Association subject to confirmation by this Court.

9. It is stated at Paragraph 22 of the petition that the reduction of the capital pursuant to the special resolution passed by the shareholders at its Extraordinary General Meeting held on 7-3-2009, will not adversely affect the petitioner - Transferee-Company or its shareholders or unsecured creditors and that it would

not cause any prejudice to the creditors of the Petitioner-Company.

10. Learned Counsel for the petitioner submits that Company Petition No. 677/2009 filed by the Transferor-Company before the High Court of Judicature at Bombay in the matter of scheme of arrangement and amalgamation Annexure-"K", was sanctioned by order dated 4-12-2009, subject to sanction by this Court in this petition.

11. This Court in Company Application No. 146/2009, by order dated 2-4-2009 dispensed with the meetings of the shareholders of the Company in view of their having extended written consent in the according with the scheme of amalgamation while directing convening of the meeting of the unsecured creditors on 2-5-2009 at 10.30 a.m. at its registered office. The Transferee-Company having complied with the said order, the Chairman of the meeting filed his report Annexure-"S" stating that the unsecured creditors unanimously approved the scheme of arrangement.

12. It is stated that upon the scheme taking effect, a total of 9,27,750 equity shares will be issued to the shareholders of the Transferor-Company. The Transferee-Company will issue and allot 8,40,000 equity shares of Rs. 10 each fully paid-up (the "First new equity shares") in the ratio of 84:1 and upon the scheme coming into effect, the Transferee-Company will issue and allot 87,750 equity shares of Rs. 10 each fully paid-up (the "2nd new equity shares") to the Equity Shareholders of the Transferor-Company in the ratio of 1 : 200. The equity shares and preference shares held by the Transferor-Company in the Transferee-Company shall stand cancelled without any further application, act, instrument or deed. The remaining shares of the Transferee-Company will be cancelled in the ratio of 2199 shares out of each 2200 equity shares and credited to the Capital Reduction Account which will then be adjusted in the debit balance in the Profit and Loss Account of the Transferee-Company.

13. Though public notice was issued on 25-6-2009 pursuant to the order dated 16-6-2009 none of the creditors or shareholders appeared before Court to oppose the said resolution. The Regional Director, on notice, represented by counsel submits that he has no objection for permitting the scheme of arrangement.

14. In the circumstances, I am of the opinion that the proposed action of the Transferee-Company, in no way, affects the interests of the creditors as well as the shareholders of the Company and that the resolution Annexure-"L" needs to be confirmed. Accordingly, I pass the following order:

(i) The reduction of the share capital of the petitioner-company resolved and effected by Special Resolution passed at the meeting of the shareholders on 7-3-2009 Annexure "L" as detailed under:

Resolved that in terms of the provisions of Clause 7 of the Scheme of Arrangement (Scheme) as approved by the Shareholders of the company and

placed before this meeting for reference, in the nature of merger of Santa Trading Pvt. Ltd. with the Company and in accordance with Section 100 and all other applicable provisions of the Companies Act, 1956 (Act)(including any statutory amendment or re-enactment thereof) and Clause 19 of the Articles of Association of the Company and subject to confirmation/sanction of the Hon"ble Karnataka High Court and other appropriate authorities, institutions or bodies and subject to such conditions as may be prescribed by any of them while granting such approval, consent, permission and/or sanction, which may be agreed to by the Board of Directors of the Company (which expression shall include Board or any Committee constituted by the Board), the consent of the company be and is hereby given for reduction of share capital of the Company by way of cancellation of 24,93,44,610 equity shares of Rs. 10 each and 1,75,85,500 preference shares of Rs. 100 each or such number of equity or preference shares that may arise pursuant to the Scheme upon the implementation thereof.

Resolved further that Board may be and are hereby authorized to do and perform all such acts, deeds, matter and things as they may in their absolute discretion deem fit and also furnish such clarification and details that may arise in regard to the subject matter of the above resolution as they may in their absolute discretion deem fit and proper is confirmed.

(ii) The form of minute as detailed understands confirmed.

FORM OF MINUTE

Approval is hereby accorded pursuant to Section 100 of the Companies Act, 1956 to the Special Resolution of the Company dated March 7, 2009, approving the reduction of the issued, subscribed and paid-up equity capital of the Company by Rs. 2,49,34,46,100 from Rs. 2,49,45,80,030, divided into 24,94,58,003 equity shares of Rs. 10 each to Rs. 11,33,930 divided into 1,13,393 equity shares of Rs. 10 each.

(iii) The Petitioner-Company to lodge a copy of this order and scheme, duly authenticated by the Registrar of Companies in Karnataka with the Inspector General of Stamps in the State of Karnataka for the purpose of adjudication of stamp duty payable if any on the same, within 60 days from the date of the order. The Registry to draw up the decree accordingly.

(iv) The petitioner to cause publication of the form of minutes of meeting in the "Hindu" and "Vijaya Karnataka", Bangalore edition, within 30" days of intimation of this order to the Registrar of Companies.