

(2010) 07 KAR CK 0045
In the Karnataka High Court
Case No : COP. No. 84 of 2010
In Re: Mphasis Ltd.

Date of Decision : 05-07-2010

Acts Referred:

Companies Act, 1956 — Section 391, 394

Citation : (2010) 102 SCL 411

Hon'ble Judges : H.N. Nagamohan Das, J

Bench : Single Bench

Advocate : A. Murali and J. Sagar, for the Appellant; M. Swayam Prakash, for the Respondent

Final Decision : Allowed

Judgement

H.N. Nagamohan Das, J.—This petition is filed under Sections 391 to 394 of the Companies Act, 1956 ("the Act") by the petitioner for sanction of the Scheme of Amalgamation at Annexure-A by which Mphasis Fin Solutions Private Limited (transferor-company) is proposed to be merged with the petitioner-company - Mphasis Limited (transferee-company).

2. The petitioner-company was incorporated on 10-8-1992 under the name and style BFL Software Limited in the State of West Bengal. Subsequently, the registered office of the company was shifted from West Bengal to Karnataka vide an order of the Company Law Board, Eastern Region. The name of the company was thereafter changed to Mphasis BFL Limited and subsequently changed to Mphasis Limited and a fresh certificate of incorporation was issued on 24-11-2006 bearing the registration as L30007KA 1992 PLC025294.

3. The registered office of the petitioner - company is situated at Bagmane Technology Park, Byrasandra, C.V. Raman Nagar, Bangalore-560 093. The authorised share capital of the petitioner-company is Rs. 245,00,00,000 (Rupees two hundred and forty five crores only) divided into 24,50,00,000 (Rupees twenty four crores fifty lakhs only) fully paid-up equity shares of Rs. 10 each and the issued and subscribed capital is Rs. 209,59,64,210 (Rupees two hundred and nine crores fifty nine lakhs sixty four thousand two hundred and ten only) and

paid-up share capital was Rs. 209,57,08,210 (Rupees two hundred and nine crores fifty seven lakhs eight thousand two hundred and ten only) divided into 20,95,70,821 (Twenty crores ninety five lakhs seventy thousand eight hundred and twenty one) fully paid-up equity shares of Rs. 10 each.

4. The petitioner-company was incorporated to carry on the business among others, to manufacture computer systems, computer peripherals and accessories, develop application softwares, and to run electronic data processing centres and morefully described in the Memorandum and Articles of Association of the petitioner-company furnished at Annexure-B to the petition. The latest audited balance sheet for the year ending 31-10-2009 is produced as Annexure C. The petitioner-company is a profit making company as per the Balance sheet.

5. The Board of Directors of the petitioner-company has approved and adopted a Scheme of Amalgamation in its meeting held on 24-11-2009 by virtue of which the Transferor-Company is proposed to be merged with the petitioner-company.

6. The petitioner-company was directed to hold/convene the meeting of the equity shareholders and a common meeting of secured and unsecured creditors of the petitioner-company vide order dated 17-2-2010 passed in Company Application No. 46/2010 and the said order was modified by this Court vide order dated 3-3-2010 passed in C.A. No. 129/2010 and further corrected the typographical error as per order dated 8-4-2010 passed in C.A. No. 211/2010, for the purpose of considering and if thought fit approving with or without modification the Scheme of Amalgamation, whereunder the transferor-company is proposed to be merged with the petitioner-company. The Chairman appointed by this Court convened the said meetings on 7-4-2010 and filed his report regarding the result of the said meetings.

7. The transferor-company was incorporated on 13-6-2002 under the name and style AIG Systems Solutions Private Limited in the State of Tamil Nadu bearing registration No. U72400TN2002PTC04891 having its registered office at 7th floor, Olympia Technology Park, FORTIUS, 1 SICDO Industrial Estate, Guindy, Chennai 600 032. Subsequently, its name has changed to Mphasis Fin Solutions Private Limited and the registered office changed to "The Lords II", Northern Extension Area, Ekkatuthangal, Thiru-ViKa Industrial Estate, Guindy, Chennai 600 032. The transfer-company was incorporated with main objects to carry on the business among others, of electronic data processing services in the field of information technology services.

8. The transferor-company is a wholly owned subsidiary of the petitioner-company, upon the scheme becoming effective, no shares of the petitioner-company will be allotted to the shareholders of the transfer-company and the transferor company will be dissolved without winding up.

9. This Court directed the petitioner to take out publication in The Hindu English daily and in Kannada Prabha, Kannada daily published from Bangalore on or before 5-5-2010 fixing the date of hearing as 2-6-2010, also ordered to issue

notice to the Regional Director. Accordingly, the petitioner-company has carried out the advertisement and furnished the copies of The Hindu and Kannada Prabha dated 30-4-2010 along with memo dated 24-5-2010. Pursuant to the notice issued to the Registrar of Companies, Bangalore has filed an affidavit dated 19-6-2010 on behalf of the Regional Director with the following observation:

As regards the accounting treatment prescribed in clause 10.3 of the scheme, petitioner may be advised to transfer the surplus to the Capital Reserve instead of General Reserve in accordance with Accounting Standard-14

10. The petitioner-company has filed affidavit dated 28-6-2010 undertaking to comply with the observation made by the Regional Director.

11. Pursuant to the advertisement of the hearing of the petition none of the shareholders, creditors, employees or any other persons have appeared before Court to oppose the Scheme of Amalgamation.

12. All the employees of the transferor-company in service on the effective date shall become the employees of the transferee-company on such date without any break or interruption in service and on the terms and conditions not less favourable than those subsisting with the transferor-company. As already noticed supra no employee of the transferor-company has appeared before the court to oppose the scheme of amalgamation. The shareholders and creditors have approved the scheme -Annexure-A with requisite majority.

In the circumstances, the petitioner has made out a case for sanctioning the scheme of amalgamation - Annexure-A. Hence the following order:

(i) Petition is hereby allowed.

(ii) The Scheme of Amalgamation - Annexure-A proposed by the transferee-company is hereby sanctioned and binding on the petitioner, its shareholders and creditors subject to compliance of observations made by the Regional Director and sanctioning of the Scheme by the High Court of Judicature at Madras.

(iii) Petitioner shall serve a copy of this order on the Registrar of Companies in the State of Karnataka and also in the State of Tamil Nadu within 30 days from the date of receipt of copy of this order.