

(2009) 06 BOM CK 0105

In the Bombay High Court

Case No : C.P. No's. 375 and 376 of 2009 connected with C.A. No's. 219 and 520 of 2009

In Re: Reliance Communications Infrastructure Ltd.

Date of Decision : 19-06-2009

Acts Referred:

Companies Act, 1956 — Section 100, 101, 102, 103, 391

Citation : (2009) 151 CompCas 538

Hon'ble Judges : A.M. Khanwilkar, J

Bench : Single Bench

Advocate : Janak Dwarkadas and Rajesh Shah, instructed by Rajesh Shah and Co., N. Venkataram, instructed by Madekar and Co, for the Appellant; Yogesh Bhate, instructed by S.K. Mohapatra for Regional Director, for the Respondent

Final Decision : Dismissed

Judgement

A.M. Khanwilkar, J.—Heard learned Counsel for the parties.

2. The sanction of the court is sought under Sections 391 - 394 read with Sections 78 and 100 - 103 of the Companies Act, 1956, to the scheme of arrangement between Reliance Communications Infrastructure Ltd. ("the demerged company") and Reliance Telecom Ltd. ("the resulting company") and their respective shareholders and creditors.

3. Counsel appearing on behalf of the petitioners has stated that they have complied with all the requirements as per directions of this Court and they have filed necessary affidavits of compliance in the court. Moreover, the petitioner-companies also undertake to comply with all the statutory requirements, if any, as required under the Companies Act, 1956 and the Rules made thereunder.

4. The Regional Director has filed an affidavit stating therein that the scheme is not prejudicial to the interest of the creditors, shareholders and the public. However, in paragraph 6 of his affidavit, he has stated that the petitioner-companies may be directed to furnish an undertaking that no employees would be adversely affected from or due to the implementation of the scheme.

5. Accordingly, Mr. Hari Nair, authorised signatory of the petitioner/demerged company has filed an affidavit dated June 17, 2009, wherein he has stated that the demerged company does not have any staff and the employees engaged in or in relation to the treasury activities, and has given an undertaking that all the existing employees of the demerged company would continue to remain so as per the terms of their employment with the demerged company and hence the employees of the demerged company would not be adversely affected from or due to the implementation of the scheme. This assurance is accepted.

6. Upon perusal of the entire material placed on records, the scheme appears to be fair and reasonable and is not violative of any provisions of law and is not contrary to any public policy. None of the parties concerned have come forward to oppose the scheme. Moreover, the Regional Director has stated that the scheme as proposed is not prejudicial to the interest of the shareholders, creditors and the public.

7. Since all the requisite statutory compliances have been fulfilled and objections raised by the intervenor have been answered by counsel for the petitioners, Company Petitions Nos. 375 of 2009 and 376 of 2009 filed by the petitioner-companies are made absolute in terms of prayer Clauses (a) to (d) and (a) to (c), respectively.

8 The petitioner-companies to lodge a copy of this order and the scheme with the concerned Superintendent of Stamps for the purpose of adjudication of stamp duty payable, if any, on the same within 30 days of obtaining the certified copy and/or an authenticated copy of the order.

9. The Income Tax Department will be free to examine the aspect of any tax payable as a result of the scheme by either of the two entities. The petitioners undertake that they will not urge before the Income Tax authorities that the issue of taxability cannot be gone into by reason of the order passed by this hon'ble court.

10. The petitioners in all the company petitions to pay costs of Rs. 7,500 each to the Regional Director in the Company Petitions Nos. 375 of 2009 and 376 of 2009. Costs to be paid within four weeks from today.

11. Filing and issuance of the drawn up order is dispensed with.

12. All concerned authorities to act on a copy of this order along with the scheme duly authenticated by the Company Registrar, High Court, Bombay.

13. There are two applications which are on Lodging Nos. 672 of 2009 and 673 of 2009 filed by Rajkot Saher/Jilla Grahak Suraksha Mandal and Another, the intervenor in the present company petitions. Since the main petitions have already been disposed of, nothing survives in the company applications hence dismissed and disposed of.