

In Re: Idea Cellular Ltd.

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Court : Gujarat

Decided On : Aug-31-2009

Reported in : [2009]96SCL352(Guj)

Judge : Jayant Patel, J.

Acts : [Companies Act, 1956](#) - Sections 95(1), 211, 211(3A) and 217

Appeal No. : Company Petition No. 167 of 2009 in Company Application No. 171 of 2009

Appellant : In Re: Idea Cellular Ltd.

Advocate for Def. : P.S. Champaneri, Adv.

Advocate for Pet/Ap. : Mihir Joshi and; Singhi, Adv.

Judgement :

Jayant Patel, J.

1. The present petition has been preferred for seeking sanction to the Scheme of Demerger of Idea Cellular Ltd., (petitioning-demerged company) and Idea Cellular Towers Infrastructure Ltd. (resulting company). The Scheme of Arrangement in the nature of demerger is at Annexure D for which the prayer is made for sanction.

2. It appears that vide order dated 18-4-2009 read with order dated 28-4-2009 passed by this Court in Company Application No. 171/09 for consideration of Scheme of Arrangement in the nature of demerger, the meetings of equity shareholders, secured creditors, and unsecured creditors were ordered to be held. Thereafter, all the meetings have been held and the Chairman at the meeting has filed reports. The reports show that the Scheme of Arrangement in the nature of Demerger has been sanctioned by the requisite majority of all equity shareholders present and voting at the meeting as well as secured creditors and so far as the unsecured creditors are concerned, the same has been approved unanimously.

3. The present petition came to be admitted on 13-7-2009 and the advertisement was ordered to be published in Times of India, English Daily and Gujarat Samachar, Gujarati daily. Publication in the Official Gazette was dispensed with. The affidavit has been filed on behalf of the petitioning company dated 28-7-2009 for compliance to the order for publication and together with the said affidavit, the relevant extract of the paper publication are also produced. The further affidavit dated 24-8-2009 has been filed, wherein it has been stated that the petitioning company or its advocate has not received any objection from any person in response to the publication made in the newspaper as directed of this Court.

4. In response to the Notice issued to the Central Government, Mr. R.K. Dalmia, Deputy Registrar of Companies has filed the affidavit based on the communication received by the Registrar of Companies from the office of the Regional Director dated 19-8-2009. The objection of the Central Government reads as under:

A. Balance Sheet as at 31-3-2008 of the demerged company, viz., M/s. Idea Cellular Limited was scrutinized by the Registrar of Companies, Gujarat in normal course, during which violation/non-compliances or Section 95(1)(e), Section 211 read with Schedule VI, Section 217 and Section 211(3A) read with Accounting Standard-29 were observed. However, the company had denied the same. The Registrar of Companies, Gujarat is in the process of issuing show-cause notice as part of the follow up action in the matter. The above facts being 'material facts' are brought to the notice of this Hon'ble High Court for information, since the demerged company is a listed company.

B. The Directorate is in receipt of complaint from SEBI of one Mr. Jusbir Singh Bedi, a shareholder of the demerged company alleging non-receipt of annual report of the company. Necessary action has been initiated in the matter.

5. It appears from the objection that there is alleged violation of the statutory provisions and there may be initiation of the proceedings upon the complaint from SEBI. Uptil now, the proceedings are not initiated nor there is any concluded decision thereon. Under these circumstances, in view of the decision of this Court in the case of Norfolk Infotech (P.) Ltd. In Re [2009] 89 SCL 381, the only observation deserves to be made is the stand of the competent authority on the aspects of alleged breach and the defence of the concerned officer of the company in this regard shall remain open and shall not stand as concluded. Further, the sanction granted by this Court in the present proceedings shall not operate as a bar to either side in contending the breaches and/or the rights for defence as may be available in law.

6. It has been stated that as the registered office of the resulting company is situated at Delhi, the Company Petition No. 223/09 was preferred before the High Court of Delhi and the sanction has been granted vide order dated 3-8-2009 and the learned Counsel has also produced on record the copy of the order of the High Court of Delhi granting sanction to the Scheme of Arrangement in the nature of demerger.

7. No other adverse circumstances are brought to the notice of this Court.

8. Hence, subject to the observations made hereinabove, on the aspects of the alleged breach or any action as may be initiated in future, the present Scheme of Arrangement in the nature of demerger is sanctioned as per the provisions of Companies Act.

9. The cost of the Central Government is quantified at Rs. 3,500. It will be open to the petitioning company to pay the cost of the Central Government by making payment directly to the learned Assistant Solicitor General Mr. Champaneri by A/c. Payee cheque.

