
(2011) 03 SHI CK 0253
In the High Court Of Himachal Pradesh
Case No : Company Petition No. 2 of 2011

Jaiprakash Power Ventures Ltd.

APPELLANT

Vs

Jaypee Karcham Hydro Corpn. Ltd. and Another

RESPONDENT

Date of Decision : 14-03-2011

Acts Referred:

Companies (Court) Rules, 1959 — Rule 73, 9
Companies Act, 1956 — Section 391, 393, 394

Citation : (2011) 03 SHI CK 0253

Hon'ble Judges : Dev Darshan Sood, J

Bench : Single Bench

Judgement

Dev Darshan Sud, J.—This petition has been preferred by Jaiprakash Power Ventures Limited (in short "JPVL") having its registered office at JUIT Complex, Wagnaghat, P.O. Dumehar Bani, Kandaghat, District Solan, H.P. (hereinafter referred to as the "Transferee Company") under the provisions of Sections 391, 394 of the Companies Act, 1956 and Rule 9 of the Companies (Court) Rules, 1959 (hereinafter referred to as the "Act" and "Rules" respectively) for amalgamation with Jaypee Karcham Hydro Corporation Limited and Bina Power Supply Company Limited (in short "JKHCL" and "BPSCL" respectively) also having their registered office(s) at JUIT Complex, Wagnaghat, P.O. Dumehar Bani, Kandaghat, District Solan, H.P. (hereinafter referred to as the "Transferor Companies")

2. The Transferor Companies and Transferee Company are having their registered office at the same place. It is pleaded that the Transferee Company has been incorporated as a Public Limited Company on 21st December, 1994 under the name and style as mentioned in this petition. Certificate of commencement of business was issued on 9th January, 1995. Initially the Company was registered as Jaiprakash Hydro-Power Limited and subsequently the name was changed to Jaiprakash Power Ventures Limited on 23rd December, 2009. The Company has an authorized share capital of 3,90,00,00,000 (equity shares of Rs. 10/- each), out of which the subscription issued and paid up capital is 2,09,56,80,200,

(equity shares of Rs. 10/- each). This is the capital share holding/subscription as on 31st March, 2010 and there is no change in the share holding pattern. It is a subsidiary of Jaiprakash Associates Limited which holds 76.252% of the paid up capital. The objects of the Company are detailed in the Memorandum and Article of Association of the Transferee Company (Annexure-3 filed with this petition). It is pleaded that the Company owns and operates two Hydro Power Plants namely, 300 MW BASPA II Hydro Power Plant at District Kinnaur, H.P. (BASPA-II) and 400 MW Hydro Power Plant at Vishnuprayag, Uttarakhand (VPHEP). In addition, the Company is setting up a number of Hydro Electric Projects in Madhya Pradesh, Arunachal Pradesh, Meghalaya, Karchana and Bara Thermal Power Projects in U.P., Karcham Wangtoo Hydro Electric Project in Himachal Pradesh.

3. The Scheme of Amalgamation, Annexure-1 to the petition, inter alia, states that all the three Transferee and Transferor Companies are engaged in power generation business and the primary object of consolidation of the business of hydro, thermal and other power Projects is to render the business more cost effective, better financial viability and reduced costs. The petition extracts and sets out some of the salient features of the Scheme in paras 8 and 10 of the petition.

4. It is pleaded that by a Resolution passed by the Board of Directors on 14th February, 2011, the Scheme inter alia has been approved by the Board of Directors of Jaypee Karcham Hydro Corporation Limited and on the same date this Scheme was also accepted by Jaiprakash Power Ventures Limited and Bina Power Supply Company Limited. The Resolution passed by the Board of Directors in all the three cases states that subject to the approvals, including those of the Stock Exchanges and the Financial Institutions/Banks etc. and this Scheme meeting all the statutory requirements the approval has been granted. The Memorandums and Articles of Association of Jaypee Karcham Hydro Corporation Limited (Annexure-5) and Bina Power Supply Company Limited (Annexure-7) have also been filed with this petition alongwith their respective balance sheets as on 31.12.2010.

5. The prayer made is that the meetings of the Equity Shareholders and Creditors of the Transferee Company as well as of the Transferor Companies be called for. The meetings of the Equity Shareholders of JKHCL, Transferor Company No. 1 and BPSCL, Transfer Company No. 2, may be dispensed with. It is also pleaded that the share holding of JKHCL is with that of Jaiprakash Power Ventures Limited and Jaiprakash Associates Limited and that vide Annexure-12 the Scheme for Amalgamation has been approved by all the shareholders. It is also pleaded that Bina Power Supply Company Limited is wholly owned subsidiary of the Transferee Company and the Scheme of Amalgamation has been approved. The petition also details the creditors of each of the Company. The report of the valuation of shares of JPVL and JKHCL for determining the fair exchange ratio as also that of JPVL and BPSCL, both reports prepared by Sobhagya Capital Options Ltd., have been placed on the record.

6. ICICI Bank which is the lead financial institution, has in principle agreed for the amalgamation as also State Bank of India and IDBI subject to the conditions as contained in the communications as annexed vide Annexure-11, the National Stock Exchange of India Limited have conveyed their "No Objection" to the Scheme of Amalgamation with limited reference to those matters having a bearing on listing/delisting/continuous listing requirements within the provisions of the Listing Agreement. The Bombay Stock Exchange has also vide communication dated 7th March, 2011 accorded their approval and has conveyed their "No Objection" with limited reference to those matters having bearing on listing/de-listing/continuous listing requirements within the provisions of the Listing Agreement.

7. I have heard learned Counsel appearing for the Petitioner and have gone through the record.

8. The prayer of the Petitioner for dispensing with the meeting of Equity Shareholders of Transferor Company No. 1 (JKHCL) and Transferor Company No. 2 (BPSCL) is granted. The meeting of the Equity Shareholders of the Company will be held as under:

(a) The meeting of the Equity Shareholders of Jaiprakash Power Ventures Limited (JPVL) and Creditors of all the three Companies will be held on 30th April, 2011 at the Registered Office of each of the Company which is situated at JUIT Complex, Wagnaghat, P.O. Dumehar Bani, Kandaghat, District Solan at the various times as directed hereunder:

(b) The meeting of the Equity Shareholders of Jaiprakash Power Ventures Limited, Transferee Company will be conducted at 10.30 A.M. for which purpose Shri N.K. Sood, Advocate will be the Chairman and Mr. Paresh Sharma, Advocate, and Mr. Rajiv Rai, Advocate, will be the Co-chairmen. Their remuneration is fixed at Rs. 1,00,000/- (Rs. one lac only), Rs. 80,000/- (Rs. eighty thousand only) and Rs. 27,000/- (Rs. twenty seven thousand only) respectively.

(c) The meeting of the Creditors of Jaiprakash Power Ventures Limited, Transferee Company, will be conducted at 12.30 A.M. for which purpose Mr. R.K. Gautam, Senior Advocate will be the Chairman and Mr. Vijay Chaudhary, Advocate and Mr. Rajiv Rai, Advocate, will be the Co-chairmen. Their remuneration is fixed at Rs. 1,00,000/- (Rs. one lac only), Rs. 80,000/- (Rs. eighty thousand only) and Rs. 27,000/- (Rs. twenty seven thousand only) respectively.

(d) The meeting of the Creditors of Jaypee Karcham Hydro Corporation Limited, Transferor Company No. 1, will be conducted at 2.30 P.M. for which purpose Shri Tarlok Chauhan, Advocate will be the Chairman and Mr. Ashok Tyagi, Advocate and Mr. Dheeraj Vashist, Advocate, will be the Co-chairman. Their remuneration is fixed at Rs. 1,00,000/- (Rs. one lac only), Rs. 80,000/- (Rs. eighty thousand only) and Rs. 20,000/- (Rs. twenty thousand only) respectively.

(e) The meeting of the Creditors of Bina Power Corporation Limited, Transferor Company No. 2, will be conducted at 4.30 P.M. for which purpose Mr. Vinay Kuthiala, Advocate will be the Chairman and Mr. Aman Sood, Advocate and Mr. Dheeraj Vashist, Advocate, will be the Co-chairmen. Their remuneration is fixed at Rs. 1,00,000/- (Rs. one lac only) and Rs. 80,000/- (Rs. eighty thousand only) and Rs. 20,000/- (Rs. twenty thousand only) respectively.

(f) The Chairmen and Co-Chairmen of each meeting will, in addition to the fee, be entitled for free transportation from Shimla to the venue of the meeting and back. For this purpose, the Petitioner is directed to make adequate arrangements. In addition, the Chairmen and Co-Chairmen of each of the meetings shall be provided with all the records required as also secretarial services. In addition, pocket expenses incurred by them shall be reimbursed by the Petitioner.

(g) Advertisement informing the date, time and place of aforesaid meetings of the Creditors of all the Petitioner Companies and the Shareholders of Transferee Company will be published separately by the Petitioners in accordance with the Companies (Court) Rules, 1959 in the news papers, namely, "Economic Times" having its circulation throughout India, "The Hindustan Times" English Edition published from Chandigarh and "Divya Himachal" Hindi Edition, published from Chandigarh. Notices of these meetings will also be affixed on the notice board of all the Companies at their respective registered offices. The notices/ advertisements shall state in clear and in unequivocal terms the date, time and venue of the meeting (s) and that the copy of the proposed Scheme of Amalgamation and that of the explanatory statement required to be furnished, can be obtained free of cost or charge from the registered office of the Petitioner Company(s).

(h) A notice of 21 clear days will also be sent to each Shareholder of Transferee Company as well as to all the Creditors of the three Petitioner companies by post, at their respective last known addresses alongwith copies of the proposed Scheme of Amalgamation and the explanatory statement as required u/s 393 of the Companies Act. In view of discontinuation of the system of issue of Certificate of Posting by the Post Offices in terms of circular No. 2-4/2008-P0 dated 23rd February, 2011 issued by the Ministry of Communications and IT, Deptt. of Posts, the prayer of the Petitioners to dispense with the requirement of Rule 73 to issue notices under Certificate of Posting, is granted.

(i) The Quorum for the meeting of Equity shareholders shall be determined by the Chairman/Co-chairman of each meeting in accordance with the Article of Association of each Company. The method of voting shall also be determined by them including the procedure for voting by proxy as provided in the articles or otherwise.

(j) On the conclusion of the meetings, Chairmen/Co-Chairmen shall submit their respective reports to the Court along with result of the meeting within seven

days of the conclusion of the meeting. The reports shall be duly supported by respective affidavits of the Chairmen/Co-chairmen.

(k) The Scheme shall be open for inspection by the shareholders of any category as also the creditors at the registered office of the Company on all working days between 10.00 A.M. to 5.00 P.M.

The Chairman and Co-chairman of each meeting have been appointed as desired by the Petitioner through his application.

List the matter on 23rd May, 2011. In the meantime the affidavits of the Chairmen/Co-Chairmen be filed.

Dasti copy on usual terms.