

(2008) 03 OHC CK 0016

In the Orissa High Court

Orissa Small Industries Corporation Ltd.

APPELLANT

Vs

Orissa Pump and Engineering Co. Ltd.

RESPONDENT

Date of Decision : 20-03-2008

Acts Referred:

Companies Act, 1956 — Section 433, 434, 439

Citation : (2008) CLT 555 Supp : (2009) 148 CompCas 477 : (2008) 1 OLR 815
Supp : (2008) OLR 555 Supp : (2009) 96 SCL 347

Hon'ble Judges : M.M. Das, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

M.M. Das, J.—Co. Pet. No. 28 of 2003 has been filed under Sections 433, 434 and 439 of the Companies Act, 1956, against the opposite party, the Orissa Pump and Engineering Company Ltd. with a prayer for winding of the said company along with other ancillary prayers.

2. The petitioner is the Orissa Small Industries Corporation Ltd., which is a Government of Orissa undertaking. It is the case of the petitioner that the opposite party is a registered company under the Registrar of Companies, Orissa. The petitioner-company carries on business to promote and establish. companies and associations for the prosecution or execution of industrial undertakings, projects and industrial enterprises of any description whether of a private or public character which in the opinion of the petitioner-company would contribute to the industrial development of Orissa and to acquire and dispose of shares and interest in such companies or associations or undertakings on such terms and conditions as may be deemed fit by the petitioner-company to promote and operate schemes for industrial development of the State. The opposite party-company came into existence on being incorporated on March 27, 1982, with the objectives as mentioned in its articles and memorandum of associations. The Government of Orissa, as a policy decision, decided to privatize certain industries which were operating within its control. The opposite party-company being one

such company, it was decided to privatize the same. The petitioner-company which held 100 per cent, equity shares in the opposite party-company was required to divest all the shares in favour of private management. Accordingly, an advertisement for privatization-was issued in January, 1997 in the local dailies as per orders of the Government basing on the recommendation of the Cabinet Sub-Committee. The offers received could not be considered as the same were not accompanied with required earnest money deposits. Thereafter, further advertisement was issued through the Orissa State Financial Corporation, according to the direction of the State Government. Two writ petitions were filed before this Court challenging such process of advertisements, by the workers of the opposite party-company, being of 1997 O.J.C. 2978 and 12053 of 1997. This court, while issuing notice in the first writ petition directed the petitioner-company not to accept any bid without leave of this Court. Subsequently, on an application being filed by the petitioner-company, this Court by order dated May 12, 1998, passed in both the aforementioned writ petitions, which were heard together, modified the interim order, allowing the petitioner-company to take a final decision with regard to privatization of the opposite party-company. In the interregnum, an offer was received in response to the advertisement made through the Orissa State Financial Corporation and since there was no response from large number of bidders, the petitioner-company entered into a negotiation with one bidder and on finalizing the negotiation sent the same for approval of the Government. The State Government accorded its approval to the said bid. As per the terms of negotiation, the total value of the share capital was evaluated at Rs. 32.82 lakhs (approximately). Against such share value, the intending bidder deposited Rs. 17 lakhs to acquire major share, in the month of July, 1998 and accordingly, came into management having become the majority shareholder. On October 21, 1998, as per the negotiation and the evaluation of the share capital and after taking into consideration all factors, a understanding was arrived at between the petitioner-company and the new management of the opposite party-company and by such understanding, the terms of understanding were reduced to writing and the same were engrafted as conditions of agreement which was entered into between them. Be it stated that the written agreement was executed after the bidder paid Rs. 17 lakhs and became the majority shareholder in the opposite party-company. The unit was admittedly hartded over to the private management in terms of the agreement and the said private management of the opposite party-company submitted the accounts to the petitioner-company relating to the assets, liability position as on date of handing over, according to the terms of the agreement, which were verified by the chartered accountant of the petitioner-company. The board of directors of the petitioner-company in order to expedite the process for finalization of the matter constituted a committee of directors, which convened the meeting on January 5, 2007 and in terms of the proceeding of the said meeting recommendations were placed before the board of directors of the petitioner-company, which were confirmed. The said recommendations related to reconciliation of accounts and quantum of unsecured loan. It appears that thereafter various correspondences

have been made between the petitioner-company and the opposite party-company with regard to finalization of the accounts, ultimately resulting in a statutory notice u/s 434 of the Companies Act issued by the petitioner-company through its lawyer, dated December 11, 2002. The opposite party-company thereafter sent a reply to the said notice stating therein that the petitioner-company should release the unsecured loan amounting to Rs. 26,29,332 failing which the opposite party-company would take shelter of law. It was also stated in the reply that the opposite party-company would pay the amount of Rs. 14,82,113 during the said financial year, i.e., by end of March, 2003, to acquire full share capital. It has been alleged by the petitioner-company that the opposite party-company did not adhere to the terms made in the agreement and has failed to pay the dues of the petitioner-company. On the above ground, the prayer for winding up of the opposite party-company has been made by the petitioner-company.

3. After issuance of notice, the opposite party-company entered appearance through its counsel and has filed a counter affidavit to the petition for winding up. In the said counter affidavit, the private management of the opposite party-company has asserted that it has acquired 100 per cent, share capital of the company in the meantime by making full payment of the value of share capital. With regard to the other dues as claimed by the petitioner-company, the opposite party-company in its affidavit has denied the same and disputed the said claim by making a counter claim that the petitioner-company is required to pay Rs. 26,29,332 to the opposite party-company. During pendency of this application, it appears that different miscellaneous cases were filed out of which Miscellaneous Case No. 46 of 2005 has not been disposed of. In the miscellaneous cases, the opposite party-company claimed the cost of the dual desk and bench supplied by it for which payments were received by the petitioner-company. Various orders have been passed on the previous miscellaneous cases directing the petitioner-company to settle the dispute with regard to payment of the price of such dual desks and benches supplied by the opposite party-company.

4. Be that as it may, since the Co. Pet. No. 28 of 2003 is being finally disposed of, this Court feels that it is not required to pass any further order in the pending miscellaneous cases, which should be treated as disposed of by this judgment. The agreement executed between the parties has been annexed to the company petition as annexure 1. It appears that a bona fide dispute has been raised by the opposite party-company in respect of the claim made by the petitioner-company that the dues of the petitioner-company have not been paid by the opposite party-company. The agreement also stipulates certain adjustment to be made between the parties.

5. In view of such disputed question arising with regard to settlement of the accounts between the parties, this Court considers that the dispute raised by the opposite party-company with regard to the claim of the petitioner-company is a bona fide one and no order of winding up of the opposite party-company can be

passed in such circumstances. The claim of the opposite party-company with regard to the price of the goods such as dual desks and benches supplied by it, against the petitioner-company, if any, can be recovered by the opposite party-company under the common law forum. It is also open to the petitioner-company to approach the common law forum, if it has any dues against the opposite party-company.

In the result, I do not find any merit in this company petition, which is accordingly dismissed.