
(2001) 07 JH CK 0077

In the Jharkhand High Court

Case No : Company Application No. 7 of 2000 (R)

P. Devi Properties Pvt. Ltd.

APPELLANT

Vs

Shree Jagannath Coal Co. Pvt. Ltd.

RESPONDENT

Date of Decision : 03-07-2001

Acts Referred:

Companies Act, 1956 — Section 235, 236, 237, 238, 239

Citation : (2001) 07 JH CK 0077

Hon'ble Judges : S.J. Mukhopadhaya, J

Bench : Single Bench

Advocate : Biren Poddar, A.K. Sahani, Ajay Poddar and D.P. Mishra, for the Appellant;

Judgement

S.J. Mukhopadhaya, J.—This Company Application has been jointly preferred by M/s. P. Devi Properties Pvt. Ltd. and Shree Jagannath Coal Co. Pvt. Ltd. under Sections 391 and 393 of the Companies Act. 1956.

2. According to the applicants, Applicant No. 1, M/s. P. Devi Properties Pvt. Ltd.. was incorporated on 28th July, 1971 as a Private Ltd. Co. by sharers under the provisions of the Companies Act. 1956. Its registered office is situated in the District of Dhanbad. The authorised share capital of the said Company is Rs. 10.00.000/- divided into 10.000 equity shares of Rs. 100/- each. The amount of capital paid up or credited as paid up is Rs. 9,89,800/- divided into 9898 equity shares of Rs. 100/- each. The details of object of Applicant No. 1. P. Devi Properties Pvt. Ltd. Company have been stated and the latest financial position of the said Company has been reflected in the audited balance sheet find profit and loss account for the year ended 31st March, 1999, enclosed as Annexure 2.

3. The Applicant No. 2, Shree Jagannath Coal Company Pvt. Ltd. is stated to have been incorporated on 24th January. 1991 as a Private company Ltd. under the provisions of the Companies Act, 1956. Its registered office is situated at No. 3, Fancy Lane, Calcutta 700 001. The authorised share capital of the Applicant No. 2. Shree Jagannath Coal Company Pvt. Ltd. is Rs. 10,00,000/- divided into

10,000 equity shares of Rs. 100/- each. The issued subscribed and paid up capital is Rs. 1,10,000/- divided into 1100 equity shares of Rs. 100/- each are fully paid up. The object of Applicant No. 2 has also been shown. The latest position of the Applicant No. 2 is that it is still carrying on business which has been shown in the audited balance sheet and profit and loss account for the year ended 31st March, 1999. A copy of which has been enclosed as Annexure 4.

4. It is stated that the object of the application is to obtain sanction of the court, a Scheme of Arrangement propounded between the Applicant Companies and their respective members, whereby and where under, Applicant No. 1. P. Devi Properties Pvt. Ltd. and all accretions thereto together with all lands, compounds, yards, rights, easement etc. situated at Katrasgarh. District Dhanbad, Bihar (now Jharkhand) and all liabilities appertaining thereto will be transferred to and vested in the Applicant No. 2, M/s. Shree Jagannath Coal Pvt. Ltd. Company, in consideration whereof the applicant No. 2 will issue and allot shares to Applicant No. 1. The rest of the business, assets and liabilities of the Applicant No. 1 shall continue to be carried on by the applicants and would remain belong to the said applicants. At the respective Board's meeting of the Applicant Companies held in July 10, 1999, the scheme of Arrangement has been approved by the Board of Directors of the Applicant Companies and a copy of the Scheme has been enclosed as Annexure 5.

5. The relevant portion of the Scheme has been shown at Part II of Annexure 2 and reads as follows :--

PART II

SCHEME.

1. With effect from the transfer date P. Devi Properties Pvt. Ltd. without further act or deed be deemed to have been transferred to and vested in the Transferee Company as a going concern and all the officers and all the officers and employees employed at P. Devi Properties Pvt. Ltd. would be taken over by the Transferee company without any break in their service and the Provident Fund in respect of the said officers and employees would be transferred accordingly. The Transferee Company would be treated and would take over as successors of Transferor company all contracts Agreement, agencies, licenses, decree hold properties, lease tenancies, telephones pertaining only to P. Devi Properties Pvt. Ltd. the Transferee Company would also be treated and would take over as successors of the Transferor Company in respect of registration with various Governments, companies and departments pertaining only to P. Devi Properties Pvt. Ltd.

a. All legal proceedings now pending by or against the Transferor Company in respect of P. Devi Properties Pvt. Ltd. would be continued by or against the Transferee Company.

3. The Transferee Company undertakes and shall pay satisfy and discharge and

perform the obligation pertaining to the said P. Devi Properties Pvt. Ltd. and the business there at and fulfill all such contracts, engagements, if any, in respect thereof and for an in respect of the staff and workers employed in respect of the business of P. Devi Properties Pvt. Ltd. and shall indemnify the Transferor Company against all such obligations, contracts and engagements and against all actions, proceedings, costs, damages, claims and documents whatsoever in respect thereof.

4. All the employees of the Transferor Company employed or engaged in P. Devi Properties Pvt. Ltd. would with effect from the 1st April, 1999 become the employees of the Transferee company on the same terms and conditions without any interruption in their services.

5. In consideration of the transfer of assets and liabilities of P. Devi Properties Pvt. Ltd. by the Transferor Company, the Transferee Company shall without further application issued and allot to the Transferor company 12045 Equity Shares of Rs. 100/- each as fully paid up in the Share Capital of the Transferee Company.

6. The Transferee company shall take necessary steps for increase of the Share Capital.

6. The case was taken up on 9th May, 2000 when the Court on hearing the parties, ordered to hold a meeting of the holders of the equity shares of Applicant No. 1, P. Devi Properties Pvt. Ltd. at Katrasgarh. District Dhanbad on Tuesday, 13th June, 2000 at 10 a.m. for the purpose of considering and, if thought fit, approving with or without modification, the Scheme of Arrangements, proposed to be made between the two Companies. A minimum of 21 clear days, before the day appointed for meeting and advertisement convening the meeting was allowed and statement was ordered to be furnished pursuant to Section 393 of the Companies Act. It was also observed that forms of proxy can be obtained from the Office of the Companies or at the Office of the Advocate, and the advertisements were inserted once in Hindustan Times published from Ranchi and Janmat (Hindi) published from Dhanbad. A notice convening the meeting at the place and time together with a copy of the arrangement and copies of the State required u/s 393 and prescribed form of proxy were ordered to be sent by pre-paid letter post "Under Certificate of Posting" addressed to each of the holders of the equity shares at their respective registered or last known addresses. The Advocate of the Companies as was named, was directed to file a form of "the Advocate in the Court, notice and statement accompanies by the notice for settlement by the Registrar of the Court.

7. The Court also made Mr. Rajesh Lala, Advocate as the Chairperson of the meeting as was held on 13th June, 2000. The Chairperson was directed to issue advertisement and sent out the notices of the meeting, as referred above. The quorum of meeting was fixed to be two members/holders of the equity shares and voting by proxy was permitted, provided that proxy in the prescribed form

duly signed by the person entitled to attend and vote at the meeting is filed at its registered office at Katrasgarh not later than 48 hours before the meeting.

8. The Court further observed that value of each member/holder of equity shares shall be in accordance with the Books of the companies and where entries in the books are disputed, the Chairperson to determine the value for the purpose of the meeting.

9. The Chairperson was (SIC) ordered to report the court the outcome of the said meeting within a stipulated period duly verified by his advocate.

10. Notice of the application was also forwarded to the Central Government. Regional Director, Company Law Board. The name of the Newspaper in which it was to be published was modified vide order dated 11 th July, 2000 and the meeting followed by further modification made by the Court on 20th March, 2001, wherein the date of meeting was extended apart from the modification made in respect to the publication of the notice in the newspaper.

11. Mr. Rajesh Lala, Chairperson filed an application on oath enclosing the copy of the report of Chairperson dated 16th April. 2001. It is stated that in terms of the Court's order, he acted as Chairperson of the meeting of the equity share holders of M/s. P. Devi Properties Pvt. Ltd., held on Saturday the 14th March. 2001 at 12.30 p.m. at Katrasgarh, District-Dhanbad after publishing notices in the newspapers "Hindus Times" and "Prabhat Khabar". The statement regarding the acceptance of the scheme by the present equity share holders in the meeting held on 15th day of March. 2001 are based on written acknowledgement/voting of each of them present and all of them were duly identified by the independent witnesses. The attendance of the equity share holders were taken and the copies of the Scheme were placed before them in the meeting and initialled by him for the purpose of identification and all of them accepted the same without any modification.

12. The application have given the details of the Directorate of both the Applicant Companies showing their names and the equity shares held by them.

13. The counsel for the Applicants pointed out that majority in number representing more than 3/4th in value of the share holders were present and voted in favour of the Scheme.

14. To satisfy the Court, the stipulations as laid down under proviso to Sub-section (2) to Section 391, the Applicant Companies put on affidavits, the material fact relating to the companies, such as, latest financial position of the Company upto 31st March. 1999, enclosed auditor's report on the Accounts of the Company (Annexure 2). It is also specifically stated that no proceeding is pending against them under Sections 235 to 251 of the Companies Act, 1956 against any of them and the provisions of Monopolies and Restrictive Trade Practices Act.1969 are not applicable to any of the Applicant Companies.

15. Having regard to the facts and circumstances, and in view of power as

entrusted under Sub-section (2) to Section 391 of the Companies Act. 1956, this Court being satisfied that the Applicant Companies have disclosed all the relevant facts and materials and having brought on record the material fact relating to the Companies, sanction the Compromise/Arrangement made between the Applicant No. 1. M/s. P. Devi Properties Pvt. Ltd. and Applicant No. 2. Shree Jagannath Coal Co. Pvt. Ltd.. as shown in the Scheme enclosed as Annexure 5 to the application, as referred and quoted above.

16. The Applicants are given liberty to obtain a certified copy of this order to be filed with the Registrar of the Companies.

17. The Company Application stands disposed of with the aforesaid observations and directions.

18. Application disposed of.