

(1999) 05 KL CK 0007
In the High Court Of Kerala
Case No : C.P. No. 6 of 1999

PSI Data Systems Ltd.

APPELLANT

Vs

Registrar of Companies

RESPONDENT

Date of Decision : 31-05-1999

Acts Referred:

Companies Act, 1956 — Section 391

Citation : AIR 2000 Ker 23 : (1999) 2 ILR (Ker) 830

Hon'ble Judges : K.A. Abdul Gafoor, J

Bench : Single Bench

Advocate : Antony Dominic, for the Appellant; R. Ganesh and Dinesh R. Shenoy, for the Respondent

Final Decision : Allowed

Judgement

K.A. Abdul Gafoor, J.—This is an application u/s 391 of the Companies Act for sanction of a scheme of arrangement and compromise between the Company and its preferential share-holders. The Company, according to the affidavit, is not functioning on profitable basis. It is impossible for the Company to discharge its liabilities towards the preferential share-holders. Therefore, an arrangement has been thought of to release the preferential share-holders by converting their stake in the company as loan due to them from the company. This will protect, according to the company, the preferential shareholders. It is in that respect this application u/s 391 of the companies Act has been filed to record and sanction that compromise.

2. A notification for the meeting of the preferential share-holders has been issued and a meeting had been convened. The Chairman has filed his report. In the meeting not only the preferential share-holders but also equity share-holders and secured creditors were present. The unanimous decision endorsed the proposal made by the company as aforesaid. Therefore, u/s 392 of the Companies Act, the company prays for an order to sanction the said scheme.

3. Notice had been issued to the Central Government and other necessary parties. It is contended on behalf of the Central Government that preference shares can be redeemed only in terms of Section 80(1) of the Companies Act, 1956. Such redemption shall be out of the profits earned by the company or out of the fund collected by issuing further shares. In the proposal made by the company preferential shares are not sought to be redeemed out of the funds obtained in either of the two manners. Therefore, the proposal is opposed to Section 80(1).

4. The provisions contained in Section 80(1) is to protect the preferential shareholders and their interest from any unilateral action of the company and the equity shareholders. When the company unilaterally, without the participation of the preferential share-holders, decides to redeem their stake, naturally, it shall be in terms of Section 80(1) of the Companies Act and not otherwise. An arrangement u/s 80(1) shall be without the participation, knowledge and consent of the preferential share-holders. In this case, the meeting of the preferential share-holders was held and all of them including equity share-holders and the secured creditors have consented for the arrangement. The preferential share-holders who are if at all adversely affected, have no objection in the arrangement proposed by the company. In such circumstances, it is not to the prejudicial interest of such share-holders but it is as consented by them. Therefore, there is no reason to withhold the sanction in terms of Section 391(2) of the Companies Act. Accordingly, I order to sanction the scheme as proposed by the company and I issue an order in terms of Rule 81 of the Company (Court) Rules, in tune with the scheme of arrangement. A copy of this order shall be forwarded to the Registrar of companies, Ernakulam. The company shall make payment to the preferential share-holders at the earliest.