

**GOVERNMENT OF INDIA
DISINVESTMENT
LOK SABHA**

UNSTARRED QUESTION NO:5726
ANSWERED ON:30.04.2003
DISINVESTMENT OF PSUS
RATNA SINGH;SHIVAJI MANE

Will the Minister of DISINVESTMENT be pleased to state:

- (a) the number of instances in which PSUs has been sold and resold with profit motive;
- (b) the details thereof with regard to bidding / re-selling price at each point of sale;
- (c) whether any inquiry has been conducted into it; and
- (d) if so, the details thereof?

Answer

MINISTER OF COMMUNICATIONS AND INFORMATION TECHNOLOGY AND MINISTER OF DISINVESTMENT (SHF SHOURIE)

(a) & (b) An instance of sale of shareholding of Batra Hospitality Private Limited has been brought to the notice of Government. The entire business of Centaur Hotel Airport Mumbai (CHMA), a unit of Hotel Corporation of India Limited (HCI) was transferred to M/s Batra Hospitality Private Limited (BHPL) on 'slump sale' basis through the process of disinvestment on the basis of their financial bid of Rs.83 crores received on 18.1.2002. The Agreement to Sell between HCI and BHPL was executed on 18.4.2002 and transfer of the business in favour of BHPL took place on 5.6.2002. Shri A.L. Batra, erstwhile Chairman of BHPL, has intimated that the entire shareholding of BHPL has been bought over by Sahara India Group from the then existing shareholders of BHPL on 10.10.2002. It has also been intimated by Sahara India Group that the total transaction value paid to the shareholders of BHPL amounted to Rs.45 crores in addition to repaying the borrowings from Oriental Bank of Commerce to the extent of Rs. 70.50 crores. The Agreement to Sell entered into between HCI and BHPL for transfer of the business of CHMA to BHPL prohibits Assignment of the Agreement benefits or burdens under the Agreement without the prior consent of HCI. Similarly, the Lease Agreement between Airports Authority of India (AAI) and BHPL for the land on which the hotel is located prohibits mortgage, assignment, transfer or sub-lease of the property by BHPL without the prior consent of AAI.

(c) & (d) The Government had sought the advice of the Attorney General of India (AG) on the sale of its entire shareholding by Batra Hospitality Private Limited (BHPL) to Sahara India Group (SIG) and the subsequent change in the name of the company to Sahara Hospitality Private Limited (SHPL). The advice rendered by the Attorney General of India in the matter was as follows: -

With respect to the question whether the provisions of the Article 13.4 of the Agreement to Sell between BHPL and Hotel Corporation of India (HCI) have been violated because of the transfer of the entire shareholding by the then shareholders of BHPL to SIG without the consent of HCI, the Learned AG has opined that it is a well-established principle that a company is a body corporate distinct from its members. In other words, a company is a juristic person and is distinct from its shareholders. Transfer of the entire shareholding by the then shareholders of BHPL to the SIG does not in Law amount to an 'assignment'. BHPL is a legal entity separate from the shareholders. Even after the transfer of shareholding, BHPL is obliged to perform the terms and conditions of the Agreement to Sell. There has been no assignment by BHPL of the 'benefits or burdens' of the Agreement to Sell to SIG. Consequently, there was no obligation on BHPL to obtain any prior consent as contemplated by Article 13.4 of the Agreement to Sell and there has been no breach by BHPL.

As regards the issue of whether the provisions of the Article 24 of the Lease Agreement between BHPL and Airports Authority of India (AAI) have been violated because of the transfer of the entire shareholding by the then shareholders of BHPL to SIG without the consent of AAI, the Learned AG has opined that Article 24 of the Lease Agreement requires prior written approval of the Lessor if the Lessee, i.e., BHPL desires to mortgage, assign, transfer or sublet the leased premises. Transfer of shareholding of a company does not amount to either a mortgage, assignment, transfer or sub-leasing of the land which has been leased. Consequently, there was no obligation to obtain prior approval in writing from the Lessor, i.e., AAI. Hence, there has been no breach of the Lease Agreement.

In response to the question of whether BHPL has violated the provisions of the Agreement to Sell and the Lease Agreement because of change of name of the company to SHPL, the Learned AG has advised that it needs to be borne in mind that change of name does not affect the entity of the company or its continuity as the same entity. The company remains the same corporate body and the change does not affect any of its rights or obligations or render defective any legal proceedings by or against it. In the AG's view, this legal position is reinforced by Section 23(3) of the Companies Act, 1956 which reads as under: -

'The change of name shall not affect any rights or obligations of the company, or render defective any legal proceedings by or against

it; and any legal proceedings which might have been continued or commenced by or against the company by its former name may be continued by or against the company by its new name` .

As regards the question of whether any action can be taken against BHPL and SHPL to pierce the corporate veil and taking remedial actions for canceling the Agreements, the Learned AG has advised that there is no material which establishes fraudulent conduct or any illegality in the transactions and therefore, the doctrine of piercing the corporate veil would be inapplicable. Hence in the AG`s opinion, cancellation of the agreements would not be warranted.