

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
HYDERBAD BENCH, HYDERABAD**

CP No.20/75/HDB/2016

U/S 75 R/w 59, 67 of the Companies Act 1956

**In the matter of**

1. Mr. Chavali Gayatri Praveen  
S/o Sri Ch Venkateswarlu  
401, Meenakshi Heights  
A.V.Apparao Road  
E.G District, Andhra Pradesh
2. Mrs. Chavali Venkata Padma  
W/o Sri Ch Venkateswarlu  
401, Meenakshi Heights  
A.V.Apparao Road  
E.G District, Andhra Pradesh

**CERTIFIED TO BE TRUE COPY  
OF THE ORIGINAL**

...Petitioners

Versus

1. Sri Lakshmi Prasanna Agro Paper  
Industries Limited  
3-173/4, Industrial Road  
Polamuru  
Anaparthi Mandal, E G District  
Andhra Pradesh – 533342
2. Mr. Brahmananda Reddy Medapati  
2-46, Polamuru, Anaparthi – 533342  
Andhra Pradesh
3. Ms. Naga Surya Prabhavathi Medapati  
7-31 Golla Reddy Vari Veedhi  
Anaparthi – 533342  
Andhra Pradesh
4. Mr. Venkat Reddy Karri  
2-48, Polamuru  
Anaparthi- 533342  
Andhra Pradesh

....Respondents



Date of order: 07.07.2017

**CORAM**

Hon'ble Shri Rajeswara Rao Vittanala, Member (Judicial)  
Hon'ble Shri Ravikumar Duraisamy, Member (Technical)

**Parties present**

Counsel for the Petitioners: Shri S. Chidambaram  
Smt C.V. Padma (P.2)

Counsel for the Respondents (1 to 4): Shri D.A.V.S. Ravi Prasad  
Shri M. Brahmananda  
Reddy (R.2)

**Per: Rajeswara Rao Vittanala, Member (Judicial)**

**ORDER**

1. The Company Petition bearing CP No. 20/2016 is filed by Sri Chavali Gayatri Praveen and another under Sections 75, 67 R/w Section 59 of Companies Act 1956, and other applicable provisions by inter-alia, seeking to declare that allotment of shares made to 61 persons on 29.12.2007 to the extent of 2,00,000 shares of Rs.100/- each fully paid (Petitioner No.1-4000 shares and Petitioner No.2 – 3500 ) shares as illegal and void abinitio; declare that allotment of shares made to the petitioners on 31.3.2008 to the extent of 8400 shares of Rs.100/- each fully paid up (Petitioner No.1 – 4900 shares and Petitioner No.2 - 3500 shares) are illegal and void; direct the Respondent No.1 company to refund Rs.8,40,000/- along with interest of 12.5% per annum from May 2007 calculated at monthly rests till the date of refund to the Petitioners etc.
2. The Company Petition was listed before this Bench on 14.12.2016, 10.01.2017, 25.01.2017, 10.02.2017, 23.02.2017 and heard the counsels and also both parties themselves, who are present. However, they could not agree for settlement of issues in question.



3. The brief facts, as mentioned in the Company petition , are as follows:-

(a) Sri Lakshmi Prasanna Agro Paper Industries Limited, (which is referred to as Company hereinafter) was incorporated under the provisions of the Companies Act 1956 on 19<sup>th</sup> January, 2007, and its registered office is situated at 3-173/4, Industrial Road, Polamuru Anaparthi Mandal, East Godavari District – 533342. The Authorised share capital of the Company as reflected in company master data at MCA website is Rs. 8,77,72,000/- divided into 8,77,720 equity shares of Rs.100/- each. The paid up capital of the Company including the impugned allotment of shares is Rs.8,77,72,000/- divided into 8,77,720 equity shares of Rs.100/- each.



(b) The main objects of the Company is to carry out business of manufacturers and dealers in all kinds of papers such as poster paper, Kraft papers, printing papers, tissue paper and boards etc; dealers in all varieties of papers and boards in all its varied aspects including that of growers, manufacturers etc.

(c) Respondent Nos. 2 & 3 are Managing Director and Director of Company respectively.

(d) Shri Venkateswarlu, father of Petitioner No.1 and husband of Petitioner No.2, has worked as Manager, Indian Overseas Bank Tapeswaram Branch, East Godavari District for some time. The 2<sup>nd</sup> Respondent used to visit the Branch to transact of his business. In the course of time, 2<sup>nd</sup> Respondent and Shri Venkateswarlu became close friends. So the 2<sup>nd</sup> Respondent requested him to lend some amount for the business of Company, and promised an interest of 12.5% per annum on

investment to be made. Accordingly, by believing oral promises and assurances of Respondent No.2, the Petitioners advanced a loan of Rs. 8,40,000/- as deposit for a period of 3 years with an understanding that it would be renewed periodically for a further period not exceeding three years at a time. Accordingly, the Petitioner No.1 paid Rs. 3.50 Lakhs on 29.3.2007 and again Rs. 1.40 lakhs in May 2007, and Petitioner No.2 paid Rs. 3.50 lakhs on 29.03.2007.

(e) In pursuant to the above amounts deposited for a period of 3 years commencing from 29.03.2007 to 28.03.2010, Respondent No.1 issued a receipt No.22 dated 29.3.2007 to Petitioner No.1 and receipt no.21 dated 29.3.2007 to Petitioner No.2 by acknowledging the receipt of above deposits.

(f) When the said deposits were due for maturity, the Respondent No.2 has again approached the Petitioners requesting them to renew their deposits for a further period of 3 years as the Company was going through financial crunch. Accordingly, the Petitioners, vide their letter dated 15.03.2010, has extended said deposits for a further period of 3 years, and so it stands to mature in the year 2013.

(g) As the said deposits is reaching maturity in the year 2013, the petitioners sent a letter dated 20.03.2013 and subsequently several requests were also made to refund the amount along with interest due to them. The Petitioners also made a complaint to Registrar of Companies on 11.9.2014 followed by another letter dated 7.5.2016 regarding non-refund of deposit money from the Company. In pursuant to the above letters, the Company,



vide its letter dated 30/10/2014 for the first time informed them that it has allotted shares against the amount received.

(h) The Petitioners contended that they have never made any request seeking allotment of shares. Moreover, shares cannot be allotted without written consent from the parties. They have relied upon Section 41 of Companies Act 1956. Section 41(1) says Subscribers of memorandum of a company shall be deemed to be members and Section 41(2) says other person(s) can also become a member(s) of a Company provided they agree in writing etc. Hence, question of allotment of shares does not arise in the instant case.



4. It is alleged that the Petitioners deposited money with the Company only to earn decent interest and it has been fraudulently usurped by the Respondents 1 & 2. It is stated that the Petitioners and Respondent No.2 approached Mr. Padala Subba Reddy of Arthamuru, Andhra Pradesh and Rama Krishna Reddy of Ravulapalem for amicable settlement of the issue, and requested them to act as mediators to resolve the dispute. Accordingly, the Respondent no.2 has agreed to refund the deposits along with interest in instalments. Accordingly, the Respondents have repaid an amount of Rs. 1 lakh only by crediting the same to the account of the Petitioner No.2 through one of their associates account. However, he did not bother to pay about the remaining amount as per said agreement. The Respondents failed to respond to the requests made by them and the Petitioners also got issued notices dated 5/7/2014 to Respondent No. 2 on 5.7.2014 by demanding to return the remaining amount. Further, the Respondents sent a reply dated 18.07.2014 by stating that amount given by Petitioners were given as share application

monies, and thus shares were already allotted in proportionate to their deposit. They have also denied to have made any part payment. The Petitioners have strongly denied the allotment of shares and it cannot be allotted in the absence of application for such allotment and asserted it is only deposit for interest. The Petitioners further alleged that Respondents have filed fraudulent documents including Form No. 2 showing Respondent No.1 allotted shares to the Petitioners on 29.12.2007 and another allotment made to the Petitioners on 31/3/2008 and Form 2s are filed with ROC on 17.4.2009. It is contended that the alleged allotment of shares to 61 persons on 29.12.2007 is in direct violation of Section 67 of Companies Act, 1956 particularly sub-section 2 of 67. As per this Section, allotment to persons to more than 50 in number is prohibited. So any allotment made contrary to section 67 is illegal and the Company should return the investors the amount invested along with 15% interest. They have relied upon Sahara India Real Estates Company Ltd vs. SEBI (2012 25 Taxman.com 18 (SC).



5. The Petitioners contended that they were neither aware nor informed about the alleged allotment by the Respondent by illegally converting their loans/deposits into equity. It is further contended that as per the rules of the Company, shareholders are supposed to receive notices of Annual General Meeting and also entitled for receipt of financial statements of the Company. The Petitioners never received any notices as shareholders from the Company and allegations of the Respondents to have allotted shares are fabricated story depriving the Petitioners to get the deposited money along with interest.
6. It is further alleged that the Petitioner no.2 has received a letter dated 27.11.2014 from one Mr. S. Somi Reddy (relative of Respondent No.2 and also shareholder of Respondent No.1

Company) by alleging that he has arranged the loan to the Petitioner No.2 for a sum of Rs. 1 lakh by crediting the same in their account on 27.06.2014. In the letter, it is also alleged that the Petitioner No.2 promised to execute promissory note in favour of said Mr. S. Somi Reddy and undertook to pay interest at 24% per annum. The Petitioner has denied the above contentions by sending a reply dated 13.12.2014 to Mr. S. Somi Reddy. In the above circumstances, the Petitioners have sought reliefs as mentioned above.

7. A reply dated 18<sup>th</sup> January, 2017 was filed on behalf of Respondent No.1, and it was also adopted by Respondent No. 2 to 4 by memo dated 18.01.2017. The following are the main contentions raised in the reply:-



- (a) The Petitioners have earlier filed two company petitions with more or less identical prayers as mentioned in the present petition.
- (b) It is stated that Petitioners, in support of their case, have only relied upon two letters dated 15/03/2010 and 20.03.2013 which are allegedly written to the Company, which were never received by it. The Petitioners failed to file any paper or document of material document or paper viz. deposit, receipt, interest warrants, letters acknowledging the deposits, promissory notes etc.
- (c) The Respondent Company is under severe financial stress with the paper and board industry passing through rough stage for last many years.
- (d) They have contended that Petitioners failed to establish that they had deposited Rs.8, 40,000/- with Company repayable after 3 years with specific interest as claimed by

them in their petition, in as much as, the money subscribed by the Petitioners was never a deposit or any unsecured loan in the nature of deposit either within the meaning of Section 58A of the Companies Act, 1956 or Section 73 of the Companies Act, 2013.

(e) It is denied that Company has ever approached either the Petitioners or father of the first Petitioners and contend that they have subscribed the money in question for allotment of shares of the Company on their own volition for commercial purpose.

(f) It is contended that Company, way back in 2007 itself i.e., 29.12.2007, has allotted 8400 shares of Rs.100/- each to the Petitioners, and in consonance with it, it has filed Form No.2 with Office of the Registrar of Companies in 2007-2008. However, the Company in supersession to allotment on 29.12.2007, allotted shares to 49 Nos on 31.3.2008, which is inclusive of 8400 shares in aggregate issued and allotted to the Petitioners.

(g) It is stated that mistake crept into the allotment made on 29.12.2007 was subsequently rectified and allotment of 29.12.2007 was superseded by allotment made on 31.3.2008. Therefore, it is contended that question of relief to declare allotment made to 61 persons null and void is not at all tenable.

(h) The Petitioners have not submitted a single piece of paper to support their contention of deposit except two receipts bearing No. 21 and 22 both dated 29.3.2007 in order to lend support to their giving money to the Company. Irrespective of the correctness or otherwise of these receipts, which are not authentic documents of the



Company, these receipts even, otherwise are only receipt vouchers, and do not lend any credence to the deposit theory of the petitioners. Since the Company is not denying receipt money in question, the question of authenticity or otherwise of those receipts are not relevant to the issue in question.

(i) It is further stated that Petitioners being shareholders of the Company since 2007-08, the question of approaching the elders for amicable settlement of issues and thus agreed to pay a huge sum of Rs. 19, 40,000/- as contended by the petitioners, do not arise. The affidavits of third parties, which are enclosed, are not legally tenable and third parties are not arbitrators.

(j) So far as the question of sending notices etc for AGM/EGM etc to the petitioners, if they are really allotted shares in question, it is contended that Company is a closely held Company, and the majority of the shareholders are in and around at the place of Company, and thus notices were served on the shareholders of the Company at the addresses available with Company, as permitted by Section 53 of the Companies Act 1956. In any case the Petitioners cannot question and claim notices, after a lapse of 9 years.

8. We have heard Shri S. Chidambaram, PCS with Smt C.V. Padma, Learned Counsel for the petitioners and Shri DVAS Ravi Prasad with Brahmananda Reddy, Respondent No. 2 , Learned Counsel for the Respondents No.1 to 4, and have carefully perused all the pleadings including material documents filed in their support.



9. The main question arise for consideration in Company Petition by the Tribunal is whether money Rs. 8,40,000/- paid by the Petitioners to the Company is for the purpose of allotting shares in Company or as a fixed deposit as contended by the Petitioners.

10.As per the Memorandum of Association of Sri Lakshmi Prasanna Agro Paper Industries Limited dated 02/1/2007, the Company, there are 7 Equity share holders (Annexure A-1 page 4-to 10 of the Company Petition). The Authorised Share capital of the Company is Rs. 1,00,00,000/- (Rupees one crore) divided into 1 lakh each equity shares of Rs.100/- each with power to increase and to reduce the capital etc. Out of these one lakh shares, the shares are contributed by seven people namely Mr. M. Brahmananda Reddy (16000 shares), Mr M. Naga Surya Prabhavathi (14000), Mr. K. Venkata Reddy (14000), Mr S.L.V.N Reddy (14000), Mr. S. Raghu Rama Reddy (14000), Mr. Satyanarayana Reddy (14,000). As per Articles of Association Annexure – I filed at page 11-50.



11.As per Article 6(a), the Authorised share capital is Rs. 1,00,00,000/- divided into one lakh equity shares of Rs.100/- each with power to alter in accordance with the Companies Act,1956. The minimum paid up capital of the Company is Rs. 5 lakhs or such higher paid up capital as may be prescribed.

12.As per Article 10, the Company is empowered by an ordinary resolution by conducting General Meetings to increase capital by creation of new shares etc. However, it is stated that the Directors should comply with the provisions of Section 97 of the Companies Act. Article 18, prescribes mode

of application and registration for shares in the Company.  
The Article 18 reads as under:-

Any application signed by or on behalf of an applicant for shares in the Company, followed by an allotment of any shares therein, shall be an acceptance of shares within the meaning of these Articles, and every person, who thus or otherwise accepts any shares and whose name is on the register, shall, for the purpose of these Articles be a member.

13. The Board of Directors are authorised by a resolution subject to the provisions of Section 292 of the Act and the Articles of Association of the Company can accept deposits from members whether in advance or otherwise.



14. It is to be noted that Company did not deny receipt of money in question from the petitioners. But it has denied that the money was received for allotment shares only. . As stated supra, the Articles of Association of the Company prescribed specifically mode of allotment of increasing of capital, allotment of shares etc. The Company did not produce any documents to show a proper allotment of shares in question was made except saying that relevant information was filed with Registrar of Companies, as stated supra. The Company did not file any document to show that the petitioners filed any request/application requesting for allotment of shares. On the other hand, the Petitioners have filed receipt of money in question as stated supra and the same was also accepted by the Company. No documents were filed to show that the capital was increased or permission is granted to the Directors so as to allot shares of the Petitioners.

15. The Respondents have simply denied that the Petitioners have deposited the money by contending that it is for issue of fresh shares. In support of the contention that petitioners were allotted shares, the Company did not file any proof to show Petitioners as shareholders were called for or issued any notices of AGM/EGM etc. But they merely contended that the Company is a closely Company, and majority of the shareholders are in and around at the place of Company. Therefore, notices were served to the shareholders by hand for the meetings as per Section 53 of the Companies Act, 1956. Moreover, they contend that the Petitioners cannot raise the issue of service of notice after a lapse of 9 years.
16. It is the responsibility of Company to produce all relevant records of prove its material averments that the money in question was paid for allotment of shares but not as deposit. The Respondents even failed to file of Memorandum and Articles of Association and minutes/ proceedings passed by the Board of Directors confirming that the Petitioners have deposited the amounts in question only for the purpose of allotting shares. The Respondents have miserably failed to submit any piece of evidence to show that petitioners have made any request for allotment of shares while accepting that the money in question was received by them. In the absence of application for allotment of shares in question by the petitioners, the impugned allotment of shares to the petitioners are liable to be set aside and in the result, the money should be deemed to be fixed deposit with interest thereon made with the Company. And impugned allotment is not legally tenable.
17. The Respondents have also failed to produce any Board Resolution authorising the allotment of shares to the petitioners, Annual returns filed with the Registrar of Companies, including the names of the Petitioners, any dividend paid to the Petitioners so far, the names of the Petitioners having entered in the register of members



maintained by the Company etc. In the absence of the above statutory records / documents we are convinced that the money deposited by the Petitioners is not towards the allotment of shares.

18. It is relevant to mention here that in order to see whether the issue can be amicably settled between the parties especially in the light of both parties are closely associated as stated supra. Accordingly, the second Petitioner (Ch. V.Padma) along with her husband and Respondent No. 2 are present before Tribunal on 23.02.2017. The Petitioner along with her husband have narrated the events leading to depositing of money and have strongly again affirmed the contents raised in the Company petition and thus submitted they have paid money in question as term deposit in order to avail interest and it was never for issue of shares. And it is their hard earned saving for so many years. They are all small investors and suffering a lot at the hands of respondents, and the Company is having sufficient resources including valuable immovable properties in the name of Company. Both the petitioner and her husband have dispassionately appealed to the Tribunal to render justice as they have no other alternative remedy and the so called shares allotted would not serve any purpose. On the Contrary, Shri Brahmananda Reddy, Director of the Company has stated that there is no dispute with regard to the payment of money by the Petitioners to the Company, and it was only due to Company's continuous suffering, and unable to meet the expenses, it could not settle the issue. He has affirmed that the money paid to the Company by the Petitioners was only for the purpose of allotment of shares. However, he did not produce any documents to support his contention. Even after reserving the matter, the Respondent Company failed to produce supporting evidence, though it was specifically directed to produce the same within 5 days. And after waiting for sufficient time for production of records, we are



rendering this judgement basing on the facts available on record by concluding that the Respondent has nothing to further add to its pleading.

19. In the light of above facts and circumstances of case, it is just and proper that small investors cannot be put to loss. So, the Deposited amount of Rs. 8,40,000/- made by the Petitioners with Respondent No.1 Company should be treated as fixed deposit only, and the Company is liable to pay it with interest as orally agreed as stated supra.
20. In the result, the Company Petition bearing No. CP.No.20/75/HDB/2016 is allowed with following directions:-

- (a) We hereby declared that amount of Rs.8,40,000/- paid by the petitioners to the Company, is deemed to be fixed Deposit repayable with simple interest @ 12 % p.a. from April, 2007;
- (b) We hereby declared allotment of 4900 and 3500 shares made to the Petitioners. 1 and 2 respectively on 31.3.2008, as illegal and void abinitio;
- (c) As per power conferred upon the Tribunal under section 73 of Companies Act, 2013, we hereby directed the Company Sri Lakshmi Prasanna Agro Paper Industries Limited to refund Rs.8,40,000/- together with simple interest @ 12% per annum from April 2007, till the actual date of payment to the Petitioners, within a period of 60 days in a single payment or maximum in three instalments from the date of receipt of copy of order.
- (d) No order as to costs.



**RTIFIED TO BE TRUE COPY  
OF THE ORIGINAL**

*Sd/-*  
Ravikumar Duraisamy  
Member (Technical)

*Sd/-*  
Rajeswara Rao Vittanala  
Member (Judicial)

*V. Annapoorna*  
**V. ANNAPOORNA**  
Asst. DIRECTOR  
NCLT, HYDERABAD.