

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

C.P.No. 91/59/HDB of 2017

U/S 59 and other applicable provisions
of the Companies Act, 2013

In the matter of

Punjab Agro Industries Corporation Limited
(Through its Manager (Disinvestment))
Authorized Signatory,
Plot No. 2A, Sector 28A,
Madhya Marg,
Chandigarh

...Petitioner

Versus

1. Omega Ag Seeds Punjab Limited
6-3-1099/14/2/3, Flat No. 203,
Bhavya's Varun Sargam Villa,
Somajiguda, Rajbhavan Road,
Hyderabad-500082 (Andhra Pradesh)
2. Omega Ag Seeds (India) Limited,
48, Bank STR, Khatan Building,
GRFLR SBS RD, Fort,
Mumbai-400001 (Maharashtra)
3. Indian Overseas Bank,
PAIC Extension Counter,
Plot No. 2A, Sector 28A,
Madhya Marg,
Chandigarh

...Respondents

Date of judgement: 21.08.2017

CORAM:

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



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

Parties / Counsels present

For the Petitioner: Shri Vishawjeet Gupta, PCS
along with Shri Ravi Gupta,
Manager, Punjab Agro Limited

For the Respondent. 1: Mr. Gaurav Goel, Advocate
For the Respondent. 2: Mr. Nitin. M. Parekh, Advocate

Per: Rajeswara Rao Vittanala, Member (J)

Judgement

1. The present Company Petition bearing No. C.P. No. 91/59/HDB of 2017, is filed by Punjab Agro Industries Corporation Limited (Petitioner Company) against Omega Ag Seeds Punjab Limited & 02 others, under section 59 and other applicable provisions of the Companies Act, 2013, by inter-alia, seeking following reliefs:-



- (a) Order may please be given to R-1 to ratify the Register of Members by deleting the name of the petitioner as shareholder/members qua 780000 equity shares of Rs. 10/- each.
- (b) Order may please be given to R-1 to refund the Share Application Money of Rs. 78 lac lying sacrosanct in the account No. 35 and Fixed Deposits being maintained with R-3 along with statutory interest and if the amount standing in the account and FDs doesn't accomplish the payment along with statutory interest, the balance amount may please be ordered to be paid by Respondent No. 1
- (c) Order may please be given to R-1 to re-shift the registered office of the company from the State of Andhra Pradesh to the Union Territory of Chandigarh till

produce high quality hybrid seeds in India, and would also impart training to Indian Technicians to carry out all aspects of plant breeding, seed production and processing etc.

- (4) Accordingly, a Financial Corroboration Agreement (which is herein referred to as FCA/Agreement) executed on 22.10.1992 between Punjab Agro Industries Corporation Limited (Petitioner herein) and Omega Ag Seeds (India) Limited (Respondent No.2 herein).
- (5) That Respondent No. 1 floated a Public Issue of Rs. 3,00,00,000/- (Rupees three crore) divided into 3000000 (Thirty Lac) equity shares of Rs. 10/- each for cash at par in terms of prospectus dated 11.04.1994, which was opened for subscription on 16.05.1994 with an earliest closing on 19.05.1994 and closing not later than 26.05.1994.
- (6) That in terms of FCA, the Petitioner advanced a sum of Rs. 80.00 Lacs as Share Application Money (as per the details given here below) towards the equity of Respondent No. 1, which was deposited in a separate Bank Account No.35 with India Overseas Bank i.e. Respondent No.3, with an understanding that the amount shall be used for purposes as mentioned in the FCA Only.



Sr. No.	Date of Deposit of Share Application Money	Amount of Share Application Money (in Rs.)
1.	09.05.1994	30,00,000/-
2.	16.05.1994	50,00,000/-
	TOTAL	80,00,000/-

the full & final payment of Share Application Money along with statutory interest of the petitioner is paid by Respondent No. 1

2. Brief facts, in respect of this case, which are relevant to the issue in question, are as under:-

(1) Punjab Agro Industries Corporation Limited (herein after referred to as Petitioner/ Corporation) a Punjab State Govt. Company having CIN: U51219CH1966SGC002630 was incorporated on 11.02.1996, having its registered office at Plot No. 2A, Sector 28A, Madhya Marg, and Chandigarh. It is a Government Company registered in the Union Territory of Chandigarh, and its main objective is to promote Agro based industries in the State of Punjab by extending technical and financial assistance to interested parties to do so.

(2) Omega Ag Seeds Punjab Limited (OSPL), (hereinafter referred to as Respondent No. 1) was incorporated on 24.11.1992 having its registered office at SCF 340, Near Dhillon Complex, Manimajra, Mansa Devi Road, Chandigarh, in which the petitioner has subscribed 300 equity shares of Rs. 10/- each, and a Certificate of Commencement of Business was obtained from the Registrar of Companies, Punjab, H.P. & Chandigarh at Jalandhar on 17.12.1992.

(3) M/s Omega AG Seeds (India) Limited (Collaborator) herein after referred to as Respondent No. 2) has approached the Petitioner (Corporation) and projected that it had a license from Ag Seeds PTY Limited, a company based in Australia, and thus, asserts that it is capable of getting all necessary advance technology to



Out of the above Rs. 80 lac, shares of Rs. 2, 00,000/- have already been allotted to the petitioner.

- (7) That on 06.06.1994, Respondent No. 1 issued a notice along with agenda for convening of the Board Meeting on 13.06.1994, which was actually held on 14.06.1994 vide revised notice dated 07.06.1994 at the office of the petitioner at Chandigarh and attended by all the directors except Mr. I.S. Sekhon, Nominee Director of the petitioner. The agenda of the Board Meeting was carrying following items along with other items:

- ITEM NO. 2 : To confirm the Minutes of the last Board Meeting held on 11.04.1994
- ITEM NO. 4 : Allotment/Devolvement of Shares
- ITEM NO. 9 : Allotment of Equity Shares of Rs. 10/- each to Punjab Agro Industries Corporation Limited, Chandigarh

So it is averred that shares cannot be allotted before slated Board meetings and those shares with back dating is false and void ab-initio.

- (8) It is stated that Respondent No.1, in order to take away the funds of the petitioner deposited with Respondent No. 3, has filed CWP No. 17403 of 1994 with Hon'ble High Court of Punjab & Haryana, which was dismissed on 02.12.1994. After dismissal of CWP No. 17403, Respondent No. 1 has filed a Civil Suit No. 20 of 1994 and obtained an ex-parte injunction on 02.12.1994 without impleading the petitioner as a party, and instead sought injunction against the nominee Directors from interference in the operation of the Bank account. However, luckily the petitioner came to know about this and immediately on 03.12.1994, moved an application for vacation of the injunction order. As the matter was being delayed, Respondent No. 1 has tried to get the



amount encash, even though; it had no right to claim the same for violating the terms of FCA, which were binding on it. Thereafter, an appeal was filed on the same date on 03.12.1994, and the Learned District Judge was pleased to stay the operation of the order, and thereafter, the appeal filed was accepted and the revision against the said order was also dismissed by the Hon'ble High Court of Punjab and Haryana. Finally, the Civil Suit No. 20 dated 19.01.1995 was dismissed on 25.4.1995.

- (9) That in utter violation of the FCA, the Respondent No.1 changed the Clauses 129(a) of AOA regarding equal number of directors and 159(1) of AOA regarding appointment of Chairman of the petitioner in the Extraordinary General Meeting (EGM) held on 29.12.1995, which was issued on 04.12.1995 delivered on 27.12.1995 i.e. one day before the date of EGM. The notice dated 04.12.1995 has come as surprise to the petitioner as no notice of Board Meeting was ever conveyed to the petitioner or its nominee directors in which the alteration of MOA & AOA was discussed and decided. This clearly shows the mala fide intention of the R-1 to avoid the presence of the petitioner as the R-1 was going to alter the Articles of AOA in utter violation of the FCA without the knowledge and consent of the petitioner.

- (10) That after the aforesaid incidents, the Board of Directors of Respondent No. 1 convened the Board Meeting on 29.04.1996, and resolved to approve the cancellation of FCA by the petitioner vide its Letter No. PAIC/P&H/96/191 dated 25.04.1996 under clause 39(b) of FCA, which provides that FCA may be cancelled at any stage if the petitioner is not satisfied with the



progress of the project. In view of the aforesaid cancellation, the Board of Directors has also resolved to refund the share application money as the progress of Respondent No. 1 was not satisfactory due to the series of events taken place in the case. Hence, the resolution passed for cancellation of FCA makes the FCA non-est in the eyes of law.

- (11) That Respondent No.1 immediately on coming to know about the Board resolutions regarding cancellation of the FCA, and to refund of share application money, showed the shares as allotted on back dates and sent the same to the petitioner on 21.08.1996 i.e. after a gap of two years from the date of deposit of share application money as per the following details :



Share Certificate No.	No. of Shares	Distinctive Nos.	Date of alleged allotment
10	729600	1220001-1949600	14.05.1994
11	50400	1949601-2000000	14.05.1994
TOTAL	780000		

- (12) That the decision of the Board of Directors of R-1, regarding cancellation of FCA, was conveyed to Respondent No 3 immediately on 30.04.1996, but it refused to carry out the directions of the Board of Directors of Respondent No.
- (13) That being aggrieved by refusal of Respondent No. 3 for refund of money in the light of the cancellation of Financial Collaboration Agreement, petitioner has filed civil suit No. 154 of 98 on 04.05.1998 before the Court of Junior Judge, Chandigarh for declaration to the effect

that the amount lying deposited in Current Account No. 35 with Respondent No. 3 bank belongs to it, and further grant mandatory injunction directing Respondent No. Bank to release the amount deposited along with all accrued interest thereon and further restrain Respondent No. 1 from interfering in the refund of amount.

(14) That Defendant/Respondent No.1 filed its written statement on 28.04.1999 denying the allegations levelled against it. On the same day, it has also filed an application under Order VII Rule 11 CPC for rejection of plaint of the petitioner by affirming that since the refund of money amounts to reduction of share capital, which is barred by Section 100 of the Companies Act, 1956, and the amount mentioned in the plaint was undervalued/under stamped, the plaint was liable to be dismissed. Whereas, since the shares were never allotted to the petitioner, the amount of Rs. 78.00 lakhs paid by the petitioner as share application money is lying with R-3 sacrosanct, it doesn't fall with the ambit of Order VII Rule 11 CPC.

(15) That on 02.08.1999, the Petitioner filed its reply to the application under Order VII Rule 11 CPC of R-1 denying the frivolous allegations made in the applications.

(16) That on 20.10.1999 R-1 filed rejoinder to the reply of petitioner in application under Order VII Rule 11 CPC.

(17) That on 18.04.2001, the learned Civil Judge (Jr. Divn) erroneously dismissed the suit of the petitioner and allowed the application of R-1 under Order VII Rule 11 CPC.



- (18) That on 13.03.2002, the Petitioner challenged the said order dated 18.04.2001 of the learned Civil Judge (Jr. Divn) before Learned Addl. District Judge, Chandigarh in MCA No. 17 of 2001. The Ld. Addl. District Judge, Chandigarh vide his final judgment and order dated 13.03.2002 was pleased to dismiss the same.
- (19) That on 31.10.2002, being aggrieved, and petitioner filed Civil Revision No. 2882/02 before Hon'ble High Court of Punjab and Haryana at Chandigarh challenging the order dated 13.03.2002 passed by Ld. Addl. District Judge, Chandigarh. The Hon'ble High Court vide its interim order dated 31.10.2002 was pleased to direct R-1 and the petitioner to maintain status quo with respect to the subject amount.
- (20) That the Hon'ble High Court, after almost 11 years, vide its order dated 03.09.2013, was pleased to dismiss the Civil Revision Petition No. 2882/02 filed by petitioner herein.
- (21) That on 25.09.2013, being aggrieved, and the petitioner filed SLP (C) No. 30570/2013 before Hon'ble High Court. The Hon'ble High Court vide its order dated 25.09.2013 was pleased to dispose of SLP of petitioner by giving liberty to the petitioner to file Revised Second Appeal (RSA) before Hon'ble High Court and directed to maintain status quo upon the subjected property and further directed that the delay be condoned.
- (22) That on 21.10.2013, the petitioner accordingly filed RSA No.4144/2013 before the Hon'ble Division Bench of the High Court of Punjab and Haryana at Chandigarh.
- (23) That on 22.10.2013, the Hon'ble High Court, vide its order dated 22.10.2013, was pleased to condone the



delay in filing RSA and directed parties to maintain status quo regarding the amount in question.

(24) That on 20.05.2015, the Hon'ble High Court, vide its impugned judgment and order was pleased to dismiss the RSA No.4144/2013 filed by the petitioner herein whereby the orders passed by the courts below have been upheld raising immediate apprehension of withdrawal and appropriation of subject amount running into approximately Rs. 2.25 Crore which is public money.

(25) That on 01.06.2015, the petitioner filed Special Leave Petition No. 16824 of 2015 with the Hon'ble Supreme Court against the final impugned judgement and order dated 20.05.2015 passed by the Hon'ble High Court of Punjab & Haryana at Chandigarh in RSA No. 4144/2013.



(26) That the Hon'ble Supreme Court on 21.04.2017 dismissed the Special Leave Petition granting Liberty to the Petitioner to approach the NCLT within a period of one month. Hon'ble Supreme Court also ordered that in case application is filed in NCLT; let it be dealt with as expeditiously as possible preferably within six months. Hon'ble Supreme Court also mentioned in its order that interim order granted by this court on 08.07.2015 shall continue till the matter is considered by the NCLT.

(27) That the present case does not involve the reduction of share capital because the shares were never allotted against the share application money of the petitioner amounting to Rs. 78.00 Lac.

(28) That the petitioner has been wrongly shown as shareholder/member of R-1 qua 780000 shares of Rs. 10/- each as these shares were never allotted to the petitioner and the money contributed by the petitioner, being a State Government company, is a public money is still lying in a separate bank account sacrosanct being maintained with R-3 and has been converted into fixed deposits from time to time on the orders passed by the Hon'ble Courts.

3. Heard Mr. Vishawjeet Gupta, PCS along with Mr. Ravi Gupta, Manager, Punjab Agro Limited for the Petitioner, and Mr. Gaurav Goel, Learned counsel for Respondent No.1 and Mr. Nitin. M. Parekh, learned counsel for the Respondent No. 2 , and I have carefully perused all the pleadings along with material papers filed in their support and extant provisions of Companies Act, 1956/2013.

4. Mr. Vishwajeet Gupta learned PCS for the Petitioner, while reiterating the averments made in the Company Petition, has further submitted that the present case does not involve reduction of share capital, as shares were never allotted against the share application money of the Petitioner amounting to Rs. 78 lakhs. However, the Petitioner was wrongly shown as shareholder/member of R-1 qua 780000 shares of Rs.10/- and public money is still lying in a separate bank account sacrosanct being maintained with R-3 and has been converted into fixed deposit from time to time on the orders passed by the Hon'ble courts. He has alleged that the Register office of the Company was shifted from the Union Territory of Chandigarh to the state of Andhra Pradesh (now Telangana) without consent of the Petitioner, and it is also in violation of the terms and conditions of FCA. The Learned Counsel further contended that R-1 never carried any business activity in the State of Punjab, whereas the



amount invested by the Petitioner is public money and the same was deposited for the purpose of development and promotion of Agro based industries in the state of Punjab only. Moreover, R-1 has never allotted any shares to the Petitioner and thus, it is liable to refund share application money, which is lying with Indian Overseas Bank (R-3).

5. The Learned Counsels for the Respondents have opposed the said Company Application, and an also filed written submission, which was received on 8.8.2017.
6. Mr. Nitin Parekh, the Learned Counsel for the Respondent submitted they have invested Rs. 1,20,00,000/- and the petitioner has invested Rs. 80,00,000/- as main promoters for public issue of Rs. 3 Crores for issuance of 3 lakh shares at par of Rs.10/- each the face value in terms of SEBI Act, 1992 as more particularly stated in the prospectus and in sign by the Petitioner three Directors, Chairman Mr. B.R. Bajaj, IAS officer of the Punjab Agro Industries Corporation Ltd, Chandigarh, U.T. plus 2 others nominee being one Mr. N.S. Brar and Mr. I.S. Sheikhon in the newly formed Company as Joint Venture between the two promoters in the ratio of 650:40, OASIL & PAICL. The Company called omega Ag Seeds Punjab Ltd and was listed in the 7 Stock Exchanges of the country namely (1) Principal stock exchange 1st Ludhiana Stock exchange Punjab, (2) Bombay stock exchange (3) Kanpur stock exchange, U.P (4) Ahmedabad stock exchange, Gujarat. (5) Delhi stock exchange (6) Calcutta stock exchange and (7) The Hyderabad Stock Exchange, A.P. on allotment of the shares as approved by SEBI in consultation with Ludhiana Stock Exchange Punjab, the Principal Stock Exchange on 4th August, 1994. The share price of the company's shares has been fluctuating from Rs. 52.10 to High Rs. 2.00 (low) for the last 25 years and at present it is



around Rs. 10/- to Rs. 11/- as per the Bombay stock Exchange last quotation.

7. It is contended that Respondent No.2 cannot be made a party to the present proceedings. The Petitioner is assisted by senior counsels and legal luminaries having the battery of lawyers and counsels. However, the Respondent No.2 is individual poor farmer's agricultural company, and they are being harassed for the last 25 years. The Petitioners are resorting to forum shopping without any answer to the public at large and wasting public money without any fear of law of the land. Respondent No. 2 is a promoter company of Respondent No.1 Company alongwith the Petitioner and it has been reduced to a litigant company from an Agriculturist Company, and have suffered financially heavily for defending unwarranted litigation being filed on behalf of the petitioners.

8. There is a long history of the case right from the year 1998 as detailed supra. Initially Punjab Agro Industries Limited (Petitioner) has filed civil suit bearing No. 154/1998 on the file of Civil Judge Junior Division, Chandigarh against IOB Chandigarh and M/s Omega Agro Seeds Punjab (Respondent No.1 herein) by inter-alia seeking a declaration that the amount lying deposited in the current account No. 35 with IOB Chandigarh belongs to the Plaintiff and to release the same. This suit was rejected by an order dated 18.04.2001. The civil court, by inter-alia observed that any claim for refund of share capital it is mandatory that the provisions of Section 100 of the Companies Act, 1956 must be complied with. Since the section was not complied with, and it was also not pleaded by the plaintiff, the civil suit was held not maintainable for reclaiming the share capital and suit was barred by section 101 and Section 10 of the Companies Act.



9. Aggrieved by the said decision of the Civil Court, the Petitioner has filed an appeal bearing MCA No.17/2001 before Additional District Judge, Chandigarh. Ultimately, this appeal was also dismissed by judgement dated 13.03.2002 by inter-alia, observing there is no scope for interference in the impugned order dated 18.04.2001 particularly when there was no question of Section 100 of the Act.
10. Aggrieved by the said order dated 13.03.2002, the Petitioner has again approached the Hon'ble High Court of Punjab and Haryana at Chandigarh by filing civil revision No. 2882/2002. However, the same was dismissed by an order dated 03.09.2013 by granting liberty to the Petitioner. Aggrieved by this order, the Petitioner has approached the Hon'ble Supreme Court by way of filing SLP (Civil Nos. 30570/2013) and this SLP was also disposed of giving liberty to the Petitioner for filing second appeal as granted by the Hon'ble High Court of Punjab and Haryana. Subsequently, the Petitioner has filed a RSA No.4144/2013 before the Hon'ble High Court of Punjab and Haryana at Chandigarh. Finally, the Hon'ble High Court dismissed the appeal vide order dated 20.05.2015. Aggrieved by this Order, the Petitioner has filed another SLP bearing No.16824 of 2015. However, the same was also dismissed and liberty was granted to the Petitioner to approach the NCLT and thus, the case is filed in this Tribunal.
11. As stated supra, the present company petition is filed to rectify the Register of Members and delete the name of the Petitioner as shareholder/members qua 780000 equity shares of Rs.10 each and consequently refund the share application money of Rs. 78 lakhs. The Petitioner has filed civil suit no. 154/1998 by raising all pleas as what have been contended in the present petition. However, the suit was dismissed



ultimately, and the same became final as per the history of case mentioned supra. Finally granting liberty to the petitioner to approach this Tribunal cannot be construed that it can raise same issue, which was already considered and rejected by the Civil Court, and that too without filing proper petition seeking appropriate relief. .

12. After perusing the pleadings of both the parties, the following issues arise for consideration:

- a) Whether the present Company petition is maintainable in the light of Civil court having decided the issue in question on merits, which became final since all higher court up to Hon'ble Supreme court did not interfere with civil court decision;
- b) Whether the present company is properly filed in consonance with provisions of Companies Act, 2013,
- c) If so, what is the relief the petitioner is entitled for



13. Firstly, it would be appropriate to advert to refer various pleadings of both plaintiff/Petitioner herein and the Defendant No.2/Respondent No. 1 herein in Civil Suit No 154 of 1998 filed before Court of Civil Judge, Junior Division, Chandigarh. The suit is filed by seeking declaration that the amount lying deposited in the current account No. 35 with Indian Overseas Bank, Chandigarh belongs to plaintiff, and consequently direct to release it to them along with all interest accrued thereon. The following are their main pleadings in the plaint:

- 1) The plaintiff/petitioner company had entered into a Financial Collaboration Agreement with M/s Omega Ag-seeds(India) Ltd, the second respondent herein, which is not a party to suit on 22nd October, 1992, (which is referred to as FCA herein after)

- 2) In pursuance to the said FCA, M/s Omega Agro Seeds (Punjab) Limited/Defendant/Respondent No. 1 herein, was incorporated under the companies Act, 1956. The plaintiff has deposited of Rs. 80 Lack towards share application money by opening a separate and distinct account.
- 3) However, no shares were allotted to the plaintiff even though Board meeting for the purpose was held on 14.06.1994. However, after filing of the application on 21.08.1996, three share certificates dated 1.11.1993 and two share certificates dated 14.08.1994.
- 4) During the Board meeting dated 29.04,1996, it was decided to refund the money lying in the account in question should be refunded to the plaintiff. So the plaintiff/petitioner claimed to refund the money in question. The Defendant No 2 has also filed several cases unsuccessfully to usurp the money in question.



14. The defendant No. 2/Respondent No. 1 herein, has filed a written statement opposing the said suit on several grounds. The following are their main grounds:
 - a) It is contended that the plaintiff has not approached the court with clean hands and concealed and suppressed several material facts.
 - b) They have stated, that in pursuance to FCA dated 22.10.1992, Defendant No. 2 was incorporated on 24.12.1992 with initial Authorised Share capital of Rs. 200 Lacks divided into 2 lacs equity shares of Rs. 10/- each .Out of this amount, both the promoters has to deposit their share as per FCA. i.eRs. 120 lacs was to

be invested by one promoter (Ms Omega Ag. Seeds (India) Ltd and another Rs. 80 Lacs to be invested another promoter ie Punjab Agro Industries Corporation (Plaintiff/petitioner herein). Further, a sum of Rs. 300 Lacs were to be raised by opening of public Issue. As per extant guidelines of SEBI, both the promoters are required to deposit their agreed share money before public issue. Accordingly, the plaintiff deposited a sum of Rs. 80 Lacs in account No. 35 of defendant No. 2 opened in IOB on 14.05.1994 and thereafter, public issue of Rs. 300 lacs was opened on 16.5.1994. And thereafter, shares worth Rs. 80 lacs were issued to the plaintiff.

- c) It is alleged that the Nominee Directors of plaintiff started creating hurdles in the smooth functioning of the Company. In the process, they have resorted to several actions including not operating Bank Account No. 35 in question etc. Ultimately, they ceased to be Directors of Defendant No. Company wef 22.2.95 and 25.9.95, due to operation of law for not attending three consecutive meetings of Board of Directors.

- d) Therefore, they have pleaded to dismiss the suit.

15. After considering the entire issue in question, the Civil Court dismissed Civil Suit No. 154 of 1998 by an elaborate order dated 18th April, 2001. It is relevant to refer main findings of Civil Court as the pleadings raised in the present Company petition are more or less repetition of those pleadings, which are already considered by the Civil Court. The following are main findings of Learned Civil Court;



- (a) The learned Judge has concurred with the contention of Defendant No 2 that as soon the defendant No. 2 was created, the share capital was deposited in the account of Defendant No. 2 and share certificates were also issued, and received by the plaintiff/petitioner herein. The deposits made are not under the control of nominees of Defendant No. 2. However, the plaintiff is asking for refund of share capital and in fact, the suit must be filed for recovery of money after duly pleading/paying required court fee etc.
- (b) The basis of claim i.e Board Resolution dated 29.04 1996 was also disputed. The Defendant No. 2 is a public Limited Company, which was duly incorporated under Companies Act, and its functions are governed by its Memorandum and Articles of Association. Admittedly, the money claimed is the share capital deposited for the issuance of shares. So the real claim of the plaintiff is for return of share capital in question. To seek for return of share capital, provisions of Section 100 of the Companies Act, 1956, are required to be followed. Admittedly, the instant suit is not a case filed under the above section.
- (c) Therefore, the Learned Judge declared that the suit was not maintainable as it was not filed for reclaiming share capital in question, and it is also barred by section 100 as well as section 10 of Companies Act, 1956. The Learned court has also adverted the decision of Privy Council reported in AIR 1930, page 302, in which the following is observed;



However, liberty is given to the petitioner to approach the National Company Law Tribunal (NCLT) within a period of one month. In case applications filed in the NCLT, let be dealt with as expeditiously as possible preferably within six months

Interim order granted by this court on 08.07.2015 shall continue till the matter is considered by the NCLT.

Pending applications, if any, shall stand disposed of “

18. In pursuance to the above liberty granted by the Hon'ble Supreme Court, the petitioner has filed present Company petition on 22nd May, 2017 before this Tribunal. After issuing notices, and hearing all the parties, I am passing this final order, in due compliance with the direction of Hon'ble Supreme Court.

19. The petitioner cannot take it granted that the Hon'ble Supreme court's permission to approach this Tribunal do not mean that the petitioner can approach this Tribunal contrary to extant provisions of Company Act, 1956/2013, Memorandum and Articles of Association of the Companies in question, and also contrary to finding of Civil Court as detailed supra. It is unfortunate to note that the pleadings in the present petition are more or less repetition of pleadings made in the initial Civil Suit No. 154 of 1998 and in the subsequent appeals. And the case is filed contrary to extant provisions of law.

20. The present Company petition is filed under Section 59 and other applicable provisions of Companies Act, 2013. It is not known as to what are other applicable provisions of Companies, which the petitioner wanted to invoke in support of their case. Section 59 of Companies Act, 2013 deals with



'A limited Company not in liquidation can make no payment by way of return of capital to its shareholders except as a step in an authorised reduction of capital.

(d) In the result, the suit was rejected.

16. It is also relevant to point out here the observation that the Learned Additional District Judge, Chandigarh, while dismissing the appeal filed by the petitioner against the order dated 18.4.2001 passed in Civil Suit No. 154 of 1998, vide order dated 13th March, 2002, has observed as follows at under para 23 of the order:

'23. As a result of what has been held and discussed above, there is no scope for interference in the impugned order dated 18.04.2001, particularly when there is no compliance of section 100 of the Act as has been discussed above. Appeal being meritless is hereby dismissed with costs.



17. As discussed supra, the petitioner has continued the litigation from one court to other, that too without properly analysing the issue and filling a case. The material facts especially with regard to execution of FCA in question, its subsequent incorporation of Defendant No. 2/Respondent No.1, depositing of share capital etc are not in dispute. It is to be pointed here that the findings of civil court on core issue are not interfered with by Higher Judicial forums including the Hon'ble Supreme court. However, the Hon'ble Supreme court, in its final order dated 21st April, 2017, while dismissing SLP(c) Nos. 16824/2015 has observed as follows:

'We do not find any ground to interfere with the impugned order. The Special leave petition is dismissed.

rectification of register of members and the same is extracted below for ready reference:

'Section 59(1) If the name of any person is without sufficient cause , entered in the register of members of a Company , or after having been entered in the register, is, without sufficient cause, omitted there from or if a default is made, or unnecessary delay takes place in entering in the register, the fact of any person having become or ceased to be a member, the person aggrieved or any member of the Company, or the Company appeal in such forum as prescribed , to the Tribunal

By no stretch of imagination, the petitioner can invoke the said provision. It is not known as what is the case of petitioner. In the civil suit in question, the grievance of petitioner is that they are entitled to get return of the deposited money in question for allotment of shares. As stated supra, as per FCA /Agreement stated supra, the petitioner as one of two promoters of the Company contributed the money in question as share application. And the civil court has already given a finding that the money deposited in the account of Company in question belongs to property of the Company, and it cannot be returned unless appropriate procedure as prescribed under the Company law is complied with. And also referred to privacy counsel decision in this regard.

21. As per para 8 to 10 of the FCA/Agreement in question, the authorised share of Company (proposed/Respondent No. 1 herein) shall be Rs. 200 lacs divided into 2, 00,000/- equity shares of Rs. 10/- each and it till such time as a public issue of shares of the Company (new) is made the equity share capital of the Company shall be issued , allotted to and paid for the petitioner and Respondent No2 shall be in the ratio of



40:60 percentage. There is no clause available the Agreement that share application money of petitioner is to be returned. However, there is a clause/Para 26 of the Agreement giving option to the Respondent No. 2/Collaborator to buy the equity shares of the petitioner , that too subject to commencement commercial production ,shares are available at Stock exchange etc. Moreover, reading of Memorandum and Articles of Association, of the Respondent No. 1 Company, it did not refer that its business should be done in the state of Punjab only as contended by the petitioner. On the contrary Article III of Memo of Associates of Respondent No. 1 Company inter-alia referredany agricultural produce to be grown on mother earth and soil.

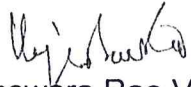
22. Articles 67 to 74 of memorandum of Associates of Respondent No. 1 Company deal with increase reduction and alteration of Capital. There is a prescribed procedure for the same subjection extant provisions of Company law. As stated supra, there is clear finding given by the Civil Court with the regard to procedure for alteration of share capital. Moreover, the prayer petitioner in the present company petition to rectify the register of Member do not arise here, and the prayer of the petitioner is, in fact is to return share capital money deposited by them for the Company shares in question. There is specific procedure prescribed under company law to deal with shares already issued. The petitioner in fact that the shares of the Company was issued to them and the civil court has also given finding to that extant. Therefore, the present Company petition is mis-conceived and not maintainable under law, and they are estopped from filing it, under the guise of granting liberty to approach this Tribunal by the Hon'ble Supreme Court. The petitioner is supposed to approach this Tribunal in accordance with law in the light of liberty granted by the Hon'ble Supreme e Court.






23. In view of the above facts and circumstances of the case, I am of the considered opinion that the company petition is devoid of any merit and it is only liable to be dismissed. Accordingly, the Company petition bearing CP No. 91/59/HDB/2017 is hereby dismissed. No order as to costs.

CERTIFIED TO BE TRUE COPY
OF THE ORIGINAL


Rajeswara Rao Vittanala
Member (Judicial)


V. ANNAPOORNA
Asst. DIRECTOR
NCLT, HYDERABAD.

प्रमाणित प्रति
CERTIFIED TRUE COPY
केस संख्या
CASE NUMBER... C.9.No.91/59/HDB/2017
निर्णय का तारीख
DATE OF JUDGEMENT... 21.8.2017
प्रति तैयार किया गया तारीख
COPY MADE READY ON... 24.8.2017