

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH AT HYDERABAD

CP No. 2074/CB/2010

(TP No. 123/HDB/2016)

Date of order: 17.03.2017

Between



Andhra Pradesh Industrial Development
Corporation Limited
Having its Registered Office at
"ParisramaBhavanam"
5-9-58/B, FatehMaidan Road
Hyderabad – 500004

CERTIFIED TO BE TRUE COPY
OF THE ORIGINAL

.... Petitioner

AND

1. Regency Ceramics Limited
Having its Registered Office at
5-8-356, N.N. House, Chirag Ali Lane,
Hyderabad – 500001
Rep by its Managing Director
2. Regent Agro Products Limited
Having its registered office at
5-8-536, N.N. House, Chirag Ali Lane
Hyderabad – 500001
Rep by its Managing Director

.... Respondents

Counsel for the Petitioner:

Shri P.V. Ravindra Kumar, Advocate

Counsel for the Respondents:

Shri P. Vikram, along with Shri Nitish Bandary

CORAM

Hon'ble Mr. Rajeswara Rao Vittanala, Member (Judicial)

Hon'ble Mr. Ravikumar Duraisamy, Member (Technical)

ORDER
(As per Rajeswara Rao Vittanala, Member (J))

1. This Company Petition bearing no. 2074 of 2010 (which is hereinafter referred to as Company petition for brevity) was initially filed by Andhra Pradesh Industrial Development Corporation Limited (hereinafter referred as "Petitioner Company") in 2010 before the then Hon'ble Company Law Board, Chennai Bench, at Chennai (CLB). The case was pending, when the National Company Law Tribunal (NCLT) was constituted. On constitution of NCLT Bench at Hyderabad for the cases pertaining to the States of Telangana and Andhra Pradesh, the case is transferred to this Bench. Hence, we have taken the case on records of this Bench and deciding it.

2. The Company petition was heard on several dates by the CLB, and it was finally transferred to this Bench in July, 2016. Accordingly, the case was started listing before this Bench from 03.08.2016 and it stands adjourned to 18.08.2016 and 16.09.2016. When none appeared for both the parties on the above mentioned dates, the Registry issued notices to the parties on 17.09.2016, directing them to be present on the next date of hearing, i.e, 06.10.2016. Subsequently, the case was posted on 06.10.2016, 20.10.2016, 18.11.2016, 21.11.2016, 07.12.2016, 20.12.2016 and 28.12.2016. On 28.12.2016, all counsels got ready and argued the case finally and thus orders are reserved.



3. The present Company Petition has been filed under Section 111A of the Companies Act, 1956, interalia seeking the Tribunal to direct:

i) The first Respondent Company:-

- i. To rectify its Register of Members by registering the Petitioner as the owner of 4,20,500 shares;
- ii. To register the shares in the Petitioner's name as the owner of 4,20,500 shares;
- iii. To issue duplicate shares to the extent of 86,500 shares to the Petitioner;
- iv. To pay all dividends, rights shares, bonus shares and any other accruals with respect to the 4,20,500 equity shares declared from time to time that the Petitioner is entitled to along with interest at the rate of 15% per annum from the respective last dates of payment of dividend that have been declared from time to time.

ii) The Second Respondent Company:-

- I. to register the 2,27,500 shares in the Petitioner's name as the owner of 2,27,500 shares.

4. The brief facts, as set out in the Company petition, are as follows:

- a. Andhra Pradesh Industrial Development Corporation Limited (APIDC Ltd) was incorporated under the provisions of the Companies Act, 1956, and it is a Government Company under the



provisions of Section 617 of the Companies Act, 1956. The main objects of the Company are to promote/improve, establish, develop industries in the State of Andhra Pradesh, etc. The Governor of A.P and his nominee holds 9,51,889 equity shares of Rs.1000/- each, constituting 98.92% of the shareholding and the Government of India (Ministry of Food Processing Industries (MoFPI)) holds 10,400 equity shares of Rs.1000 each, constituting 1.08%.

- b. M/s Regent Agro Products Limited (2nd Respondent Company) approached the Petitioner Company with a proposal to set up a coconut processing complex and requested the APIDC Ltd to invest in it. Accordingly, the petitioner Company agreed the proposal of second Respondent Company and thus, invested a sum of Rs. 90 lakhs in 2nd Respondent Company during the years 1994-95. The MoFPI had also provided an interest free soft loan of Rs. 90 lakhs to the Petitioner Company for investment in the equity of the Second Respondent.
- c. A tripartite agreement dated 14.03.1995 was entered into between the Petitioner Company, MoFPI and the 2nd Respondent Company. In terms of this Agreement, the MoFPI has released a sum of Rs.90,00,000/- to the petitioner company for investment in the equity of 2nd Respondent Company. So the 2nd Respondent, in turn, had allotted 9,00,000 shares of Rs.10 each in favour of Petitioner Company. One of the terms of the said agreement is that the Petitioner Company should disinvest the said equity within a period



of 3 years from the date of commercial production or within 5 years from the date of investment, whichever is earlier.

It is further agreed that, any delay for disinvestment would liable to pay interest @ 15% per annum by the 2nd Respondent Company.

- d. The Petitioner further states that the promoters of 2nd Respondent had executed two separate buyback undertakings on 21.03.1995, for the investment of Rs. 90 lakhs made by the petitioner directly in the equity of 2nd Respondent from its own funds and another Rs. 90 lakhs was invested by the Petitioner Company in the equity of the 2nd Respondent Company from out of the funds provided by MOFPI.
- e. As a guarantee for the above buyback undertakings, 4,20,500 shares of M/s Regency Ceramics Limited(RCL/ 1st Respondent Company) was offered as collateral securities by 16 shareholders by pledging the shares . The respective shareholders duly executed an Undertaking in favour of Petitioner.
- f. It is the case of Petitioner that the shares are offered as collateral security in consideration of the investment made in Respondent Company.
- g. It is also asserted that the Petitioner Company have every right to dispose of the above shares in any manner, if the second respondent fails its obligation as per the tripartite agreement.
- h. The Petitioner alleges that the 2nd Respondent failed to affect the buyback of shares as stated above, contrary to the pledge of shares,



and undertaking as mentioned above. Accordingly, the Petitioner Company addressed a letter dated 07.05.2007, to the Respondents calling upon the 2nd Respondent to buyback 9,00,000 equity shares, relating to the funds made available by MoFPI, and another 9,00,000 equity shares made available by the Petitioner.

In pursuant to the above letter, the 2nd Respondent informed the Petitioner Company that they have identified a buyer for buyback of equity shares held by the Petitioner, and was willing to buy back the shares at Rs.0.75 per share. Or alternatively, they have also proposed that the Petitioner can wait for a year or so, to organize suitable buyers and to give them time for their effort. . Since, the said offer was very low in comparison to the face-value of the shares, the Petitioner Company, decided to initiate action for recovery of amounts in question as per buyback undertakings.

- i. While the Petitioner Company was trying to invoke the pledge, and to sell the equity shares in question, it came to notice that 86,500 shares out of total 4,20,500 shares were misplaced, while shifting their office premises. Accordingly, the Petitioner addressed a letter dated 2.11.2007 to the 1st Respondent company to issue duplicate certificates for the above shares.
- j. In response to the above letter, the 1st Respondent, by its reply dated 13.11.2007, asked the Petitioner to comply certain formalities like lodging police complaint, filing of an affidavit on Judicial Stamp paper, Indemnity Bond on non-judicial stamp paper, etc for issuance of duplicate certificates. Accordingly, the petitioner has



complied with all the requirements for issue of duplicate certificates.

k. However, the 1st Respondent again vide letter dated 24.07.2008, informed the Petitioner that it had received a telegram from an advocate representing four shareholders, who had pledged the shares and requested them not to issue duplicate share certificates.



- l. It is further stated that the petitioner Company also addressed a letter dated 9.6.2008 to M/s Venture Capital and Corporate Investment Limited, a unit of 1st Respondent Company by enclosing original share certificates along with duly executed transfer deeds for the remaining shares i.e., 3,34,000 requesting them to transfer the shares in the name of Petitioner. Likewise, another letter to the 2nd Respondent to transfer 2,27,500 equity shares.
- m. In spite of submitting all the required documents, the 2nd Respondent simply returned the share certificate along with transfer forms to the Petitioner vide its letter dated 5.9.2008, on untenable ground of lack of sufficient proof.
- n. In the above circumstances, the Petitioner as well as respondents have exchanged several notices and letters but to no avail, and therefore the present Petitioner has been filed by the seeking the reliefs as mentioned above.
- o. It is asserted that the present petition is within period of limitation as the issue in question is a continuous cause of action as the breach is still continuing as on date.

5. The 2nd Respondent has filed a counter statement dated 06.01.2011 by inter alia contending as follows:

- a. The present petition is misconceived, unsustainable and untenable in law and facts and thus, it is liable to be dismissed on these grounds.
- b. The 2nd Respondent Company registered with BIFR under the provisions of SICA, and as such the present proceedings are liable to be suspended under section 22 of SICA
- c. The BIFR has already passed an order dated 19.08.2009 recommending for winding up of the company. However, proceedings are pending before A.P High Court. The BIFR by an order dated 05.11.1999 has specifically provided that no transfer of shares or changes in the shareholders shall take place without approval of BIFR,
- d. It is stated that the 1st Respondent never refused to transfer of shares as requested by the petitioner. However, the 2nd Respondent has only advised the petitioner to comply with all requirements for the transfer of shares. Since, the petitioner is not complying with the objections raised by the respondents, the respondents could not take effective steps.
- e. It is stated that as per Section 111(3) of the Act, an appeal has to be filed before the CLB within two months from the date of receipt of the notice of refusal or no notice has been sent by the Company within four months from the date on which the instrument of transfer was delivered to the Company. In the instant case, that stipulation was not complied with. It is also stated that proceeding are pending before AAIFR.
- f. The Industrial Promotion Organisation like the petitioner, who is joint venture partners, ought not to have taken coercive steps and work against



the promoters. It is stated that the Respondent No.2 Company was established to process coconuts, which is an agro based products with technical collaboration with ALFA label and the machinery was supplied by Tetra Pack Limited. However, due to unforeseen circumstances, the Company suffered recurring losses and thus, the unit was closed since 1999, and it got registered with BIFR for its revival.



- g. The attitude of the petitioner is very aggressive, unreasonable and arbitral and the matter can be referred to arbitration.
 - h. They have also denied the assertion that the petitioner has filed any application seeking for rectification of register of members, issue of duplicate certificate.
 - i. The 2nd Respondent cannot effect transfer of shares contrary to the order of BIFR.
6. Shri P Vikram, the learned counsel for Respondent No.1&2 while reiterating the averments made in his counter, has further contended as follows and also filed written gist of his arguments dated 02.01.2017:
- a. As per tripartite agreement and buyback undertaking, the promoters of Respondent No.2 has to purchase shares as under
 - i. For investment made by MOFI: Buyback by Respondent No.2 within 3 years from Respondent No.2 commencing its commercial operation or 5 years from the date of investment, whichever is earlier. The Respondent No.2 has started its commercial production in 1996 and limitation to buy back shares is before 1999 or 2000/2001.

- ii. For investment made by the petitioner: buyback by Respondent No.2 within 3 years from Respondent No.2 commencing its commercial operation. The Respondent No.2 had started its commercial production in 1996 and limitation to buy back shares is before 1999.
- b. As transfers of shares were not affected by 2001, the limitation period for the respondent to approach this Tribunal is three years from 2001 i.e before 2004. Thereafter after, the remedy to approach this Hon'ble Tribunal was barred as per Limitation Act. But in instant case, the petitioner has sent legal notice dated 02.11.2007 claiming to have lost the share certificates during shifting the office, and requested Respondent No.1 to issue duplicate certificates for 86,500 shares and the Respondent No.1 sent a letter dated 05.09.2008 to the petitioner stating "that share transfer form submitted does not disclose consideration amount in relevant column. In the consideration column, it is indicated that shares are pledged in favour of APIDC by invoking pledge and shares have been transferred in favour of APIDC by invoking the pledge."
- c. In view of the above, they have expressed their inability to effect the transfer for want of sufficient proof and thus they have returned the share transfer forms.
- d. As the petitioner has sent notice in the year 2007, the Company Petition on the face of it is barred by limitation as the remedy to approach this Hon'ble Tribunal was expired in the year 2004/2005 itself.



e. The Learned counsel relied upon the following decisions in support of his contention that the present petition was not filed within two months from the date of refusal of shares.

❖ Col. Gurnam Singh Gujral and Anr. Vs. Indian Hotels Company Limited ((2002)112CompCas86 (CLB))

❖ Union of India Vs Popular Constructions (AIR 2001 SC 4010) at para 13 and 15

❖ Bharat Sanchar Nigam Limited Vs Pawan Kumar Gupta (2016(1)ALD 31 (SC))

❖ Heavy Engineering Mazdoor Union Vs State of Bihar &Ors. (AIR 1970 SC 82)

7. The learned counsel for the petitioner has also filed his written gist of his oral argument dated 03.01.2017. Following are the summary of the contention raised by the learned counsel:

- a. The limitation and latches as raised by the respondents has no bearing in the present petition, which is filed under section 111A of the companies Act, 1956.
- b. He has relied upon Article 112 of the Limitation Act, 1963, which says 30 years is limitation for any suit (except a suit before Supreme Court in exercise of its original jurisdiction) by or on behalf of Central Government or any State Government, including the Government of the State of Jammu and Kashmir.
- c. The petitioner was not a party to BIFR proceedings. SICA cover was not available against Share Transfer. Even otherwise, since the proceedings were concluded as per the statements of respondents.



d. The petitioner has invested the funds of the Government of India as interest free loan for the initial period (3 years or 5 years as the case may be). However, the present case is not about the issue of disinvestment. The case of the petitioner is to change the name of shares certificates, which are offered as collateral security and pledged in its favour by certain shareholders, and other relief was to issue duplicate share certificates. The petitioner was unaware about the proceedings of BIFR and AAIFR. It is, therefore, prayed the Tribunal may be pleased to allow the petition as prayed for.



8. In the light of above rival contentions of both the parties, the following issues primarily arise for consideration by the Tribunal ;
1. Whether Tripartite Agreement dated 14.03.1995 was executed between the petitioner , the MoFPI and Second respondent ;
 2. Whether any dispute is there with regard to the investment of petitioner's Company into Respondents' Company ;
 3. Whether the respondents offered its shares as collateral security and also pledged certain shares in question to the Petitioner's Company
 4. Whether the proceedings initiated before BIFR/AAIFR have any bearing on the issue ;
 5. Whether the respondents are justified in refusing to accede the requests of the petitioner, after availing loan out of public funds, by raising pure technical grounds like latches, limitation, asking unnecessary compliances etc.

9. We have heard Sri P.V. Ravindra Kumar, learned Counsel for the petitioner and Shri P. Vikram, along with Sh. Nitish Bandary, learned

counsel for the respondents and have carefully perused all the contentions along with material papers filed in their support.

10. It is not in dispute that a Tripartite Agreement dated 14.03.1995 in name of 'Agreement for Loan in Joint Sector project 'was duly executed at New Delhi between Ministry of Food processing Industries, Govt. of India (referred to as MOFPI herein after) and Andhra Pradesh Industrial Development Corporation Limited (APIDC) (hereinafter called 'Corporation) and M/s Regent Agro Products Limited, Hyderabad (which is hereinafter called as 'Collaborator Company). MOFPI has agreed to provide Rs.90 lacs as interest free loan to the corporation for investing the same in the collaborator Companies project subject to other terms and conditions. It is also agreed therein that apart from Rs. 90 lacs provided by MOFPI, the corporation also agreed to provide another sum of Rs. 90 lacs to the collaborators Companies form its own resources. And it is also not in dispute that in terms of above agreement, the Corporation has invested the money into Collaborator Company, as agreed upon.

11. It is also not in dispute that the second respondent had separately executed two Buy-Back undertakings on 21.03.1995 for the investment of Rs.90 lacs made by the Petitioner directly in the equity of 2nd Respondent from its own funds and Rs. 90 lacs invested by the Petitioner in the equity of 2nd Respondent out of funds provided by MOFPI. As per



the said Buy-Back undertakings, the 2nd Respondent has to buy-back the shares within 3 years from the date of commercial production or within 5 years from the date of investment, whichever is earlier. In pursuant to the above Buy-Back undertakings with reference to the funds made available from MOFPI, 4,20,500 shares of 1st Respondent were offered as collateral security by 16 shareholders by pledging the shares by duly executing share transfer forms along with certificates.



In the said undertakings, there are clear declaration to the extent that APIDC will have right to dispose of the shares in question for failure of the terms and conditions of the tripartite agreement as mentioned above. The following terms and conditions are mentioned in the said undertakings:

- a. The APIDC will have the right to dispose of above shares in any manner it deems fit, if the promoters/collaborator companies fail to comply with the tripartite agreement.
- b. The undertaking is irrevocable and binding and include their heirs, successors and nominees.
- c. They shall not, without prior approval in writing, recognize or register any transfer of shares in respect of the shares pledged and they will not hold any lien in respect of such shares in favour of third parties.
- d. They also declare that without prior approval of the corporation in writing, they shall not recognize or register any transfer of shares, etc. so long as the corporation holds any shares in the Company.

12. By perusal of the terms and conditions of the above tripartite agreements and undertakings, there is no doubt that the Respondents are bound by the terms and conditions. Moreover, it is not the case of the Respondents that they have paid the money taken from the corporation (APIDC). However, the respondents are raising untenable contentions and demanding several compliances as mentioned above for accepting the request of the corporation. In fact, as stated above, the corporation has already complied with the essential condition for transfer of shares and issue duplicate certificates, etc. The reasons cited by the Respondents for not complying with the requests of petitioners are not all tenable and they liable to be rejected.



13. Another main contention raised by the Respondent is the latches and limitations in claiming the relief in the present petition. They have also relied upon the issue of commercial production, limit of 3/5 years to claim the relief, etc.

It is not in dispute that the money in question invested in collaborator's Company is public money, and admittedly, it is made available from the funds of the Govt. of India through its instrument MOFPI and funds of State Govt. through APIDC (corporation). The Respondents have raised several untenable grounds and also cited several decisions as mentioned above in the present case with respect to the latches and limitations in the light of Section 111A of the Companies Act, 1956. It is not the case of the Respondents that they have fulfilled the undertakings given under the said buy-back undertakings. It is not

comprehensible as to how latches and limitations would apply here, when the violations as per tripartite agreement and buy-back undertakings still continues.

14. The Respondent has also raised another untenable ground by contending that due to order of BIFR/AAIFR, they cannot accede to the request of the Petitioner Company. We have perused the orders passed by BIFR/AAIFR. The learned BIFR vide its proceedings dated 19.08.2009, passed in Case No. 250 of 1999 filed by Regent Agro Products Limited (RAPL) (Respondent No.2), held that it was just, equitable and in the public interest, the Company M/s Regent Agro Products Limited should wind up as per Section 20 (1 of SICA). Accordingly, the case was transferred to the concerned High Court along with copies of earlier orders/proceedings in the case for further necessary action according to law. It is also directed in terms of clause (b) of Section 22A of SICA that the company should not dispose of or alienates in any other way any of its fixed assets or current assets without prior permission of the Board and the charge holders till such time, the official liquidator is appointed by concerned High Court.

As against the said order, appeal bearing number 267 of 2009 was preferred by the RAPL before the Hon'ble AAIFR, New Delhi. Before the AAIFR, the RAPL sought more time to sort out/ tie-up a few more items like disputed liability of commercial tax department, claims of IFCI venture capital fund, APIDC and MOFPI for buy-back of their investment in equity shares. It is therefore, contended that BIFR has not



taken into consideration those aspects, before considering the issue. It is also mentioned therein that the Company has to pay the dues of APIDC and Ministry of Food Processing for buy-back of their investment in equity shares and they are claiming Rs.10 crores in terms of buy-back agreement. It has sought directions to APIDC and Ministry of Food Processing, Govt. Of India, not to take steps to enforce buy-back agreement during revival period. Ultimately, the appeal was dismissed by an order dated 03.11.2011.



By perusal of above orders, it is clear that there is no dispute that the respondents are due to the Corporation of the amounts claimed by them. The contention of the respondents that the orders of BIFR/AAIFR are coming in the way of accepting the request of the Petitioner is not at all tenable and the issue in question was not transfer of any fixed/current assets of the Respondents. The Respondent has admitted the debt of petitioner Company before AAIFR. On this ground also, the issue raised in the present petition is a continuous cause of action, and doesn't attract the provisions of limitation Act. Moreover, the corporation is entitled to claim from the respondents, whatever property remains in its name and thus, it requires that the Respondent Company should accept the request of the Petitioner as mentioned above. We have read the judgements relied upon by the Respondents and found that they are not applicable to facts and circumstance of the present case for the reasons stated above.

15. In view of the above facts and circumstances of the case, we allow CP. No.2074/CB/2010 by directing as follows:

1) The first Respondent Company:-

a. To rectify its Register of Members by registering the Petitioner as the owner of 4,20,500 shares;

b. To register the shares in the Petitioner's name as the owner of 4,20,500 shares;

c. To issue duplicate shares to the extent of 86,500 shares to the Petitioner;

2) The Second Respondent Company:-

a. to register the 2,27,500 shares in the Petitioner's name as the owner of 2,27,500 shares.

3) Petitioner Company is directed to re-submit to the Respondents, all the required documents, which were already earlier submitted and returned to take appropriate action, within a period of one month from the date of copy of receipt of this order.

4) Two months' time is granted to the respondents to comply with above directions.

No order as to costs.

Sd/-

Sd/-

RAVIKUMAR DURAISAMY
MEMBER (T)

RAJESWARA RAO VITTANALA
MEMBER (J)

V. Annapoorna
V. ANNA POORNA
Asst. DIRECTOR
NCLT, HYDERABAD - 68

