

IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH, AT HYDERABAD

C.P. No.1961/111/CB/2009

T.P. No.122/HDB/2016

In the matter of:

Andhra Pradesh Industrial Development Corporation Limited,
No.5-9-58/B, Fateh Maidan Road,
Basheerbagh, Hyderabad-500 004

.... **Petitioner**

Versus

Sri Kalyani Agro Products & Industries Limited...
Prathipadu, Pentapadu (Mandalam),
West Godavari District,
Andhra Pradesh, PIN - 534 146

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

.... **Respondent**

Judgement delivered on: 3.08.2017.

CORAM:

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

Counsels Present:

For Petitioner:

- ... 1) Mr. N.V.Prakash
- ... 2) Mr.B.Dhanraj
- ... 3) Mr. M. Krishna Prasad

Counsel for the Respondent:

... Mr.P.Ramesh

Per: Mr. Ravikumar Duraisamy, Member (Technical)

J U D G E M E N T

1. The Instant Company Petition bearing No.1961/111/CB/2009 (TP No.122/HDB/2016) was initially filed by the Petitioner, Andhra Pradesh Industrial Development Corporation Limited (Hereinafter



referred as "APIDC"), on 21-11-2008 before the Hon'ble Company` Law Board, Chennai Bench, Chennai. Since the National Company Law Tribunal (NCLT), Hyderabad Bench, has been constituted for the cases pertaining to the States of Andhra Pradesh and Telangana, the case is transferred to the Hyderabad Bench of NCLT, hence, we have taken the case on records of NCLT, Hyderabad Bench and deciding the case.

BRIEF PARTICULARS OF THE PETITIONER COMPANY:

2. The Petitioner is a Government Company u/s 617 of the Companies Act 1966. The Governor of Andhra Pradesh and his nominee shareholders hold 9,51,889 equity shares of Rs.1,000/- (Rupees one thousand only) each (98.92%) and the President of India (Ministry of Food Processing Industries, Government of India) holds 10,400 equity shares of Rs.1,000/- (Rupees one thousand only) each (1.08%) .
3. Andhra Pradesh Industrial Development Corporation Limited (APIDC) was incorporated on 16th December 1960 as Company, limited by shares, vide Registration No.01-862 vide CIN No.U74999AP1960SEC000862 with the Registrar of Companies.
4. Authorised share capital of the Petitioner is Rs.1,10,00,00,000/- (Rupees One Hundred and Ten Crores only) divided into 9,70,000 (Nine Lakh Seventy Thousand) Equity Shares of Rs.1000/- (Rupees One thousand only) each and 13,00,000 (Thirteen lakh), 13% Cumulative Redeemable Preference Shares of Rs.100/- (Rupees



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5. The Issued Share Capital of the Petitioner is Rs.109,22,89,000/- (Rupees One Hundred Nine Crore Twenty Two Lakh Eighty Nine Thousand only) divided into 9,62,289 (Nine Lakh Sixty two Thousand Two Hundred Eighty Nine only) equity shares of Rs.1000/- (Rupees One Thousand) each, 442 (Four Hundred and Forty Two) equity shares of Rs.1000/- (Rupees One Thousand only) each issued for consideration other than cash in favour of Governor of Andhra Pradesh and 13,00,000 (Thirteen Lakh), 13% Cumulative Redeemable Preference Shares of Rs.100/- (Rupees Hundred only) each.
6. The Subscribed and paid up share capital of the Petitioner is Rs.96,22,89,000/- (Rupees Ninety Six Crores Twenty Two Lakh Eighty Nine Thousand only) divided into 9,61,847 (Nine Lakh Sixty One Thousand Eight Hundred and Forty Seven) equity shares of Rs.1000/- (Rupees One Thousand only) each fully paid in cash, and 442 (Four Hundred and Forty Two) equity shares of Rs.1000/- (Rupees One Thousand only) each issued for consideration other than cash (issued in favour of Governor of Andhra Pradesh)
7. The objects of the Petitioner are i) to promote / improve establish and develop industries in the State of Andhra Pradesh; ii) to plan, formulate and execute projects for setting up industries or develop line of production.



8. The petition is filed by the Petitioner (APIDC) under Section 111A of the Companies Act, 1956 (1 of 1956), seeking the following reliefs:

- a) To direct the company to transfer 7,50,000 equity shares of Rs.10/- each and register in Petitioner's name in the Register of Members of the Company;
- b) To reimburse the appeal and incidental expenses and
- c) To pass further order/orders as deemed fit and proper.

BRIEF PARTICULARS OF THE RESPONDENT COMPANY:

9. The Respondent Company was incorporated as a limited company, within the meaning of Section 149(3) of the Companies Act, 1956 limited by shares with Regd. No.032491 (CIN UO1119AP999PTC032491).

10. The objects of the company are 1) to establish, construct, assemble, erect, build, take on lease, run and manage rice mill including para-boiled rice mills and flourmills; (2) to buy, sell, trade, import, export, cultivate, grow or otherwise deal in paddy, rice and other products obtained by the operation of rice mills and all kinds of grains, seeds and other agricultural products etc.

11. BRIEF FACTS OF THE CASE:

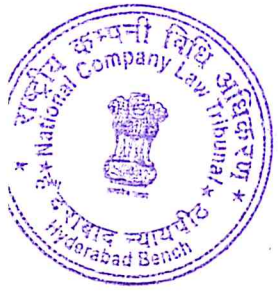
- a) The Petitioner (APIDC) submits that an amount of Rs.50,00,000 (Rupees Fifty Lakhs only) in 5,00,000 (Five Lakh) equity shares of Rs.10/- each in the Company



(Shri Kalyani Agro Products & Industries Limited) was invested during the year 2002. The promoters of Shri Kalyani Agro Products & Industries Limited viz 1. Shri V. Narayana Rao, 2. Shri V. Subba Rao, 3. Dr. M. Ranga Rao, 4. Shri V. Pallaiah and 5. Sri Venkateswara Rao, executed a buy back undertaking on 22-08-2002 to buy back discharge within three years from the date of buy back undertaking.

b) 1. Shri M. RangaRao, 2.Shri V. Narayana Rao, 3. Shri V. Venkateswara Rao, 4-. Shri V. Pallaiah, promoters of the Company lodged 7,50,000 (Seven Lakh Fifty Thousand) equity shares of the Company to the Petitioner to ensure buy-back obligation for the shares held by the Petitioner (APIDC) in the Company vide document dated 22.08.2002.

c) Further, it was stated that the Petitioner offered to disinvest the 5,00,000 equity shares held by it in the Respondent Company, in favour of the Promoter of the Company vide letter dated 30.08.2005 for a consideration of Rs.70,00,000/- (Rupees Seventy Lakh only) as per which the entire consideration was to be paid within one year. The Promoter failed to pay the entire consideration within the stipulated time. At the request vide letter dt.23.02.2007 the petitioner vide



letter dated 02.03.2007 gave extension of time reserving to itself the right to seize and sell the collateral property offered for buy back of shares and to recover the amount due as per the buyback undertaking executed by the promoters of the company. The promoters failed to pay the entire consideration together with interest despite extension of time.

- d) Therefore the Petitioner further invoked the pledge of shares and requested the company to transfer the 7,50,000 (Seven Lakh Fifty Thousand) equity shares in favour of the Petitioner and the share certificates along with share transfer forms for 5,50,000 (Five Lakh Fifty Thousand) equity shares and 2,00,000 (Two Lakh) equity shares lodged with the company on 23.07.2008 and 28.08.2008 respectively vide letters dt.18.07.2008 and 27.08.2008.
- e) As per the buyback undertaking, the promoters of the Company were due a sum of Rs.1,00,32,293/- (Rupees One Crore Thirty Two Thousand Two Hundred and Ninety Three only) as on 30.09.2008. The collateral security in the form of land was seized by the Petitioner on 11.03.2008.



12. As no response received from the Company to the Petitioner, the Petitioner informed to the Registrar of Companies, Hyderabad on 12.11.2008 regarding non-transfer of shares by the Company, and the Petitioner also requested the Company to transfer 7,50,000 (Seven Lakh Fifty Thousand) equity shares in favour of the Petitioner, vide letter dated 15.11.2008. The Company neither transferred the shares in favour of the Petitioner nor refused the transfer of shares. Hence the Petitioner prays the Bench that the Company be directed to transfer the 7,50,000 equity shares of Rs.10/- each and register in petitioner's name in the Register of Members of the Company.

13. The Case was listed before the then Hon'ble CLB, Chennai Bench on several occasions and when the hearing held on 04.03.2014, recorded that none appeared for the Respondent even on many occasion. However, a Counter dated 09.02.2010 filed by the Respondent No.1 available on record and the same has been taken on record. When the case was listed before CLB on 08-12-2009, the respondent did not appear and the petitioner mentioned that CP No.1961/111/CP/2009 sent to the respondent, the respondent has not accepted the CP served through speed post on 20-11-2008. The record of proceedings shows that R1 filed Counter. It was also recorded that none appeared for the respondent, No vakalat is seen filed on behalf of the respondents, therefore, the matter was put for exparte. When the case was listed on 06-06-2012, the respondent has filed the counter and served on the petitioner, and the petitioner was granted 3 weeks time to file rejoinder.



14. When the case was listed before CLB on 04-3-2014 none appeared for the respondent's side and the registry was directed to issue notice, and the case was posted on 19-03-2014. On 19-03-2014 again none appeared for the respondent, heard the counsel for the petitioner and reserved for orders. Subsequently the case was transferred to this Bench and it was listed on 03-08-2016 for the first time before this Bench, again none appeared for both the parties. Therefore, the Registry issued notice to both the parties vide letter CP/1961/CB/2009 & TP No.122/HDB/2016/581-582, dated 17.09.2016 and subsequently on 20-10-2016 the learned counsel for the petitioner only appeared and the counsel was permitted to take Xerox copies available on the file on this bench since the papers were lost in the floods in Chennai during the year 2015. The case was again posted on 18-11-2016.

15. The counsel for the petitioner vide his memo dated 21-11-2016 submitted that as per the oral direction of this Hon'ble Bench the counsel tried to contact the respondent to inform the date of next hearing i.e. 21-11-2016 but they were not successful inspite of repeated attempts on 18-11-2016, 19-11-2016 and reserved for orders.

MAIN SUBMISSION OF THE RESPONDENT:

16. The respondent vide its letter dated 09-02-2010 submitted its counter to the petition stating that

- a. The petitioner (APIDC) invested an amount of Rs.50,00,000/- (Rupees Fifty Lakhs) in 5,00,000 (Five Lakhs) equity Shares of Rs.10/- each in the Company (Sri Kalyani Agro Products & Industries Limited). The Company (Respondent) paid

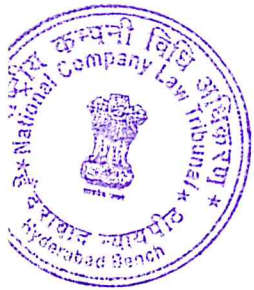


Rs.29,50,000/- on various dates by way cheques to the Petitioner i.e., APIDC Ltd; The Company is willing to pay the balance amount of Rs.20,50,000/- to the petitioner;

- b. The financial position of the Company as on the date of petition was not good, and prayed for the relief directing the petitioner to receive a sum of Rs.20,50,000/- towards full and final settlement by waiving interest and costs and other incidental expenses, and requested further to direct the petitioner not to seek for transfer of shares.

17. In response to the counter, the petitioner submitted a rejoinder dated 12.10.2012 submitting various averments including procedural lapses by the Respondent No.1. The Respondent submission/proposal to accept the petitioner to receive the balance amount of Rs.20,50,000/- towards full and final settlement by waiving interest and costs and other incidental expenses and pleased to direct the petitioner not to seek transfer of share are not accepted by the petitioner. Further the Petitioner prayed the Hon'ble Court to direct the Respondents to transfer 7,50,000 shares of Rs.10/- of R.1 in favour of the petitioner.

18. The Petitioner accepts that an amount of Rs.29,50,000/- on various dates starting from 16th September 2005 to 31.05.2008. Since the Respondent Company has paid 59% of the investment amount and willing to pay the balance amount of Rs.20,50,000/- only in view of



the precarious financial position of the company as on the date of the petition. The Tribunal being a court of equity, to render equitable justice as per the provisions of the Companies Act. Therefore, while analysing the facts and submissions of both the parties, it is clear that the Respondent Company has made payment towards its debt of around 59% and collateral security given in the form of land was also seized by petitioner on 11-03-2008. By taking into account the above facts, payments, collateral security seized by the petitioner and precarious financial position of the company etc instead of directing the Respondent company to transfer the entire 7,50,000 shares as prayed by the Petitioner's company in its favour, we direct the Respondent company to transfer 2/3rd of the number of shares submitted for transfer in the interest of equity and justice. Accordingly, we direct the respondent Company to transfer 5 lakhs shares in favour of the petitioner's company.

19. Further, we also direct the Respondent Company to transfer

5 lakhs shares to the petitioner within 10 days from the date of receipt of this order duly complying with the provisions of the

Companies Act and to rectify the Register of Members. CA pending

if any in this matter is also disposed off in view of the present order.

20. No order as to costs.



Order received by
the Registry on 24/8/2017

प्रमाणित प्रतिलिपि
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केस संख्या
CASE NUMBER CP.No.1961/111/CB/2009

निर्णय का तारीख T.P.No.112/HCB/2016

DATE OF JUDGEMENT 3.08.2017

प्रतिलिपि तैयार किया गया तारीख
COPY MADE READY ON 24.08.2017

CERTIFIED TO BE TRUE COPY
OF THE ORIGINAL

V. Annapurna
V ANNAPURNA

Sd/-

RAVIKUMAR DURAISAMY

Sd/-

RAJESWARA RAO VITTANAI A