IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Regular Second Appeal No.4144 of 2013 (O&M)
Date of decision: 20.05.2015

Punjab Agro Industries Corporation Ltd.

............Appellant

Versus

Indian Overseas Bank and another

...........Respondents

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Arun Nehra, Advocate,
and Mr. Anupam Singla, Advocate,
for the appellant.

Mr. Nitin Parekh, Advocate,
and Mr. Amit Kaith, Advocate,
for the respondent No.2.

Ritu Bahri, J.

Punjab Agro Industries Corporation Ltd-plaintiff has come up in regular second appeal against the judgment dated 13.03.2002 passed by the Additional District Judge, Chandigarh, dismissing the appeal filed by the plaintiff against the order dated 18.04.2001 passed by the Civil Judge (Junior Division), Chandigarh, whereby application made by M/s Omega Agro Seeds-defendant No.2 under Order 7 Rule 11 CPC has been allowed and the plaint has been rejected.

Plaintiff-corporation (appellant herein) had entered into a financial collaboration agreement dated 22.10.1991 with M/s Omega Agro Seeds (India) Ltd., a company registered under the Companies Act, for setting up its unit for manufacture of Hybrid Seeds. Rs.80 lacs were deposited by the plaintiff-appellant corporation by opening a separate account in the name of

M/s Omega Agro Seeds-defendant No.2. The plaintiff alleged that defendant No.2 had violated the terms of Financial Collaboration Agreement and in the meeting of Board of Directors of defendant No.2, which was held on 14.06.1994, it was decided to defer the allotment/development of shares. On 20.07.1996, an application was moved by the plaintiff-appellant before the Civil Court. Thereafter, the Board of Directors of defendant No.2, vide resolution dated 29.04.1996, decided to return a sum of Rs.80 lacs to it and this decision was conveyed by defendant No.2 vide letter dated 30.04.1996. Defendant No.1-Indian Overseas Bank refused to carry out the directions of the Board of Directors. Therefore, a suit was filed by the plaintiff-appellant corporation.

During the pendency of the suit, an application under Order 7 Rule 11 CPC was filed by defendant No.2 seeking rejection of the plaint on the ground that powers to refuse or reduce the share capital lied only with General Bodies Meeting of the shareholders. While appearing as witness in Civil Suit No.385 dated 24.02.1997/20.01.1996 titled as 'Punjab Agro Industries Corporation Vs. Omega Agro Seeds (Punjab) & another' (decided on 25.08.1998), plaintiff-appellant had admitted receipt of the shares which were allotted to the corporation.

Ultimately, the suit was held not maintainable in view of Section 100 of the Companies Act, 1956. The lower appellate Court dismissed the appeal and affirmed the findings recorded by the trial Court. It was observed that claim of the appellant would amount to reduction of the share capital of the Public Limited Company and for that a special resolution under Section 100 of the Act was required to be passed. None of the conditions as provided under Section 100 (a), (b) and (c) of the Act was satisfied as the share capital money contributed by the appellant was not towards; (a) share capital not paid up; (b) none of share capital is lost; (c) nor the share capital was in excess of the requirement of the company. If there was a resolution to return the above said amount, it was to be certified by the Court. Court means 'the Court' as per Section 2 (11) and Section 10 of the Companies Act. As per these Sections, the Court would be the 'Hon'ble High Court'. Since the application of the corporation had to be proceeded under the Companies Act, the jurisdiction of the civil court was barred because the relief claimed amounted to reduction in the share capital. For that, a special resolution had to be passed and the resolution passed by Board of Directors dated 29.04.1996 would not be sufficient compliance of Section 100 of the Companies Act.

Mr. Arun Nehra, learned counsel for the appellant, has argued that the appellant-corporation has not received the share capital after entering into the collaboration agreement and hence, was not bound to proceed under Section 100 of the Companies Act. The corporation was entitled to get the amount of Rs.80 lacs pursuant to the Board resolution dated 29.04.1996.

On the other hand, learned counsel for the respondents has argued that the finding of fact recorded by both the Courts below that three share certificates had been issued to the appellant-corporation cannot be interfered with in regular second appeal as this fact was admitted by the witness of the corporation while appearing in Civil Suit No.385 dated 24.02.1997/20.01.1996, titled as 'Punjab Agro Industries Corporation Vs. Omega Agro Seeds (Punjab) & another, decided on 25.08.1998 by the then Sub Judge, Ist Class, Chandigarh. Once, the corporation had accepted the share certificates, for all intents and purposes, the decision given by the Board of Directors was not required to be implemented. The collaboration agreement was signed on 22.10.1992 and the resolution was signed on

29.04.1996. Once, the shares were allotted, the power to reduce share capital of the company i.e. defendant No.2 was vested only with the General Bodies Meeting of the shareholders. Defendant No.2 has grown as a Public Limited Company for the last 21 years.

Learned counsel for respondent No.2 has informed the Court that the appellant-corporation has made an application under Section 100 of the Companies Act, before the Company Law Board, Principal Bench, New Delhi on 05.02.2015. The appellant-corporation has placed on record documents,(Annexures A4 to A6, to show the decision taken by the Board of Directors on 14.06.1994, where the share applications received had been deferred.

Section 100 of the Companies Act, for reference, is reproduced as under:-

> "Section 100 (1)- Subject to confirmation by the Court, a company limited by shares or a company limited by guarantee and having a share capital, may, if so authorised by its articles, by special resolution, reduce its share capital in any way; and in particular and without prejudice to the generality of the foregoing power, may:-
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> (a) extinguish or reduce the liability on any of its shares in respect of share capital not paid-up.
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> (b) either with or without extinguishing or reducing liability on any of its shares, cancel any paid-up share capital which is lost, or is unrepresented by available assets; or
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> (c) either with or without extinguishing or reducing liability on any of its shares, pay off any paid-up share capital which is in excess of the wants of the company, and may, if and so far as is necessary, alter its memorandum by reducing the amount of its share capital and of its shares accordingly.
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> (2) A special resolution under this section is referred to as "a resolution for reducing share capital."

As per Section 100 of the Act, a company limited by shares or a company limited by guarantee by way of special resolution, can reduce its capital in three situations i.e. (a) in respect of share capital not paid-up; (b) share capital lost; and (c) share capital in excess. If none of the above three conditions are existing, a company cannot make payment by way of return of capital. In ***Robert Alan Hill and others Vs. Permanent Trustee Co. of New South Waives Ltd. and others***, AIR 1930 Privy Council 302, while examining case of a company not in liquidation, it was held that no payment by way of return capital to its share holders could be made except in an authorised reduction of capital.

Defendant No.2 being a Public Limited Company, for all intents and purposes, is governed by Section 100 of the Companies Act for making payment by way of return capital. Moreover, as per Section 10 of the Companies Act, jurisdiction of civil Court is barred and it was the only Company Court which can entertain an application made by the corporation for return of its share capital of Rs.80 lacs. Further more, after signing the prospectus dated 11.04.1994, the share certificates were issued by the Board/Stock Exchange, Ludhiana on 04.08.1994 as per the SEBI guidelines. Once, the share certificates had been issued under the Companies Act, the Annual General Meeting was being attended by the shareholders every year thereafter.

Having examined the order/judgment(s) passed by the Courts below, no illegality, much less perversity, has been found therein warranting interference by this Court.

No substantial question of law arises for consideration.

Dismissed.

(RITU BAHRI)
20.05.2015 **JUDGE**
ajp