IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMARY SUIT NO.4578 OF 1997

Llyods Steels Industries Limited & Anr. ....Plaintiffs

V/s.

Tangerine Informatique Ltd. through
Official Liquidator, High Court, Bombay ....Defendant

Mr. Rajesh Maravoor i/b. Maravoor Wamorkar & Co. for the plaintiffs.
Mr. Anuraag Gokhale for the Official Liquidator (defendant company in liquidation).

CORAM : K.R.SHRIRAM,J
DATE : 23rd AUGUST, 2016

P.C.:-

1 It is the case of the plaintiff that the plaintiff by the document at Exhibit P-3 had applied for 60,000/- Zero Fully Convertible Debentures (ZFCD) at Rs.130/- per debenture payable on application. The plaintiff paid the amount of Rs.130/- per share, totalling to Rs.78,00,000/-. After the plaintiff made the payment, the defendant company (in liquidation) issued debenture certificate, in which it was shown for the first time that the certificate was being issued in respect of ZFCD of Rs.250/- per debenture each for cash at par and the amount paid up per debenture was Rs.130/-. The plaintiff state that as per the terms of issue, each of the ZFCD was to be converted into one share of Rs.10/- each at a premium of Rs.120/- each. It is also stated that after the conversion, the plaintiff could have

sold the share in the market after defendant completed certain formalities with SEBI, at minimum Rs.230/- per share and made a huge profit. The plaintiff's case is the defendant did not do the conversion and as such the plaintiff did not get any shares and hence could not sell the shares at Rs.230/- per share. The plaintiff is therefore, claiming return of Rs.78,00,000/- plus loss of profit of Rs.72,00,000/-.

2 After the suit was filed, the defendant company went into liquidation and the Official Liquidator of this court entered appearance and filed written statement. In the written statement the Official Liquidator has stated that as regards para 1 to 25 of the plaint, i.e., the entire plaint, the averments made were prior to the period of winding up of the company and hence the Official Liquidator has no knowledge. The other stand of the Liquidator is that the company is an unsecured creditor and will have to prove their debts before the Liquidator under special procedure set out in Section 528 of the Companies Act, 1956 read with Rule 154 of the Companies (Court) Rules, 1959.

In effect there is no defence to the claim filed by the plaintiff.

3 It is evident from Exhibit P-5 that the plaintiff has paid a sum of Rs.130/- towards application for the debentures. Exhibit P-3 is the application form provided to the plaintiff by the defendant company (in liquidation). In Exhibit P-3 it is also mentioned "*private issue of 7,40,000 Zero Coupon Fully Convertible Debentures (ZFCDs) of DATA CAPTURE SERVICES PRIVATE LIMITED, a company incorporated under the Companies Act, 1956 and having its Registered Officer at Unit 73A, SDF III, Santacruz Electronic Exports Processing Zone, Andheri (East), Bombay – 400 096, of Rs.250 each for cash aggregating Rs.1875 lacs, being offered by Mega Marketshare Resources Limited, the Syndicator to the deal.*"

4 Therefore, the stand of the plaintiff that ZFCD should be for Rs.130/- and not for Rs.250/- or that the resolutions referred in the debenture certificate are not applicable to them, etc. is incorrect and cannot be accepted. At the same time, if one considers the agreement at Exhibit P-1, clauses – 6,7 and 8 of the agreement read as under :-

> *"6. Each ZFCD shall be automatically converted into one equity share of Rs.10 each at a premium of Rs.120 without any further act or applications by the Debentureholders.*
>
> *7. Mega and its syndicate (hereinafter referred to as the "Offeror") shall be bound to offer the entire 7,50,000 equity shares so converted from the ZFCDs to the Indian Public through an offer for sale,*

> *through a prospectus for listing at any recognised stock exchange in India as may be mutually decided. ("OFS"). Such offer shall be made with a ceiling on the number of shares that can be applied for as may be mutually decided by the parties with a view to ensure wide disposal of the shares in the public.*
>
> *8. The conversion into equity shares shall take place immediately prior to the submission by Mega of the OFS documents to SEBI. Every debentureholder shall be deemed by the terms of the issue of the debentures to have agreed to become a member of the company under allotment of the equity shares pursuant to conversion and shall also be deemed to have authorised the company to enter his and/or their names in the Register of Members of the company."*

5 This agreement Exhibit P-1, though entered into between the defendant and one Mega Market Share Resources Limited is incorporated in the share application, signed and submitted by the plaintiff. In Exhibit P-1 it is mentioned "we further confirm that we are bound by the terms and conditions of your agreement dated 8th September, 1994 with Mega Market Share Resources Limited."

Therefore, considering the agreement at Exhibit P-1 read with share application form at Exhibit P-3, the defendant had an obligation to convert each of the ZFCD into one equity share of Rs.10/- each at the premium of Rs.120/- without any further act or application. It was also the obligation of the defendant, to facilitate the plaintiff to offer its 60,000 shares so converted from the ZFCDs to the Indian public through an offer for sale through prospectus for listing at any recognised stock exchange in India.

6 It is not the case of anybody that the defendant converted ZFCD into one equity share of Rs.10/- each at the premium of Rs.120/- or have issued shares to the plaintiff and consequently the plaintiff could not offer the 60,000 shares, had it been converted, to the Indian public. This defendant company in liquidation, therefore, has committed a breach of its agreement with the plaintiff.

Hence in my view, the plaintiff is entitled to refund of the amount of Rs.78 lakhs from the defendant company (in liquidation).

7 As regards the second part of the plaintiffs' claim for a sum of Rs.72 lakhs alleged to have been suffered as loss, paragraph 21 of the evidence of PW-1 reads as under :-

> *"21. The failure of the defendant to offer of sale of shares to public on or before 30.09.1995 in terms of the agreement dated 08.09.1994, the plaintiffs have suffered a loss of Rs.72,00,000/-. The plaintiffs no.1 are, therefore, entitled to recover the said loss of Rs.72,00,000/- from the defendants."*

8 There is no explanation as to how this loss was suffered. Infact in cross examination of PW-1 (plaintiff's only witness), PW-1 has stated that the figure of Rs.72 lakhs in paragraph 21 is a typographical error and the figure should be read as Rs.78 lakhs. This itself shows that the plaintiff is not clear what it's claim is about and therefore, is not entitled to this amount of Rs.72 lakhs.

9 The plaintiff is also claiming interest at 21% p.a. from the date of receipt of the amount by the defendant company (in liquidation) till payment/realisation. The amount of Rs.78 lakhs has been given by the plaintiff towards application for Zero Fully Convertible Debentures (ZFCD), which means no interest was payable.

Therefore, the plaintiff is not entitled to any interest upto the date of filing of the suit. From the date of filing of the suit until payment/realisation, I am inclined to grant and hereby grant interest at 6% p.a. to the plaintiff until payment/realisation.

10 The issues framed in this suit are answered as under :-

Sr. No.	***Issue***	***Answer***
1	Whether the plaintiffs prove the agreement dated 8th September, 1994 between Data Computer Service Pvt. Ltd. (Tangerine) and Mega Market Resources Limited?	Yes
2	Whether the plaintiffs prove that they have purchased 60,000 Zero Interest Fully Convertible Debentures @ Rs.130/- per Debenture from the defendants?	Yes
3	Whether the plaintiffs prove that they paid Rs.78,00,000/- to the defendant by cheque no.753046 dated 1st November, 1994 drawn on Bank of Tokyo Ltd.?	Yes
4	Whether the plaintiffs prove that the defendant varied/modified arbitrarily and unilaterally the terms of the issue of the defendant to the prejudice of the plaintiff?	No
5	Whether the plaintiffs prove that Special Resolution passed by the defendant on 26th September, 1994 and Special Resolution dated 10th October, 1994 are in	No

	violation of the terms of the issuance of debentures and in violation of terms of Agreement dated 8th September, 1994?	
6	Whether the plaintiffs prove that the defendants are liable to pay to the plaintiffs a sum of Rs.1,50,00,000/-, i.e., principal Rs.78,00,000/- plus Rs.72,00,000/- (for the loss suffered for not offering the share for sale to public) and further are liable to pay interest @ 21% on the principal sum of Rs.78,00,000/- from 1st November, 1994 till realization?	Partly as stated above

11 The suit, therefore, stands decreed in the sum of Rs.78,00,000/- together with interest thereon at 6% p.a. from the date of the suit until payment/realisation.

No order as to costs. Decree be drawn up accordingly.

(K.R.SHRIRAM,J)