IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.281 of 2019

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All India Investor's and Field Member Association, Ashok Nagar Road No. 1C, Kankarbagh Patna 20 through its President Ashok Prasad Verma Son of Late Mahavir Prasad, Resident of Moh.-Ashok Nagar Road No. IC. Kankarbagh, P.S. Kankarbagh, District-Patna.

... ... Petitioner/s

Versus

1. The Union of India through the Principal Secretary Department of Finance, Govt. of India, New Delhi.
2. The General Manager, Securities and Exchange Board of India.
3. The Reserve Bank of India through its General Manager, Patna
4. The Assistant General Manager SEBI (Securities and Exchange Board of India)
5. The State of Bihar through the Principal Secretary Department of Finance Govt. of Bihar, Patna.
6. Alchemist Group of Companies, Plot No.5 Rajiv Gandhi Near I.T. Park Chandigarh.
7. Alchemist Township India Ltd. Flat no. 1511 Front Portion Himkunt Chandra 89 Nehru Place New Delhi South Delhi Dist-110019.
8. Alchemist Infra Reality Ltd, 723 DLF Tower, A Jasola District Center, New Delhi.
9. Alchemist Holdings Ltd, 405 Jyoti Shikhar Towers, Janakpuri, District Center New Delhi-110058.
10. Branch Manger Alchemist Group Patna Branch, Verma Karpura Appt. S.P. Vrma Road, Patna-800001.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Md. Jubai Ansari, Advocate
		Mr.Amitabh Ranjan Mishra, Advocate
For the State	:	Mr.Raghwendra Kumar, SC-22
For the UOI	:	Mr. Ram Anurag Singh, CGC
For the Res. No. 3		Mr. K.K. Jha, Advocate

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL ORDER

2 04-07-2019 The petitioner in the present case claims itself a Registered Association of All India Investors and Field Membrs of the Alchemist group of companies (Respondent Nos. 6 to 10).

When this Court called upon learned counsel for the petitioner to produce the certificate of the registration of the Association, he has produced a certificate of registration issued to the petitioner on 03.10.2018 in Form III Rule 3 of the Rules framed under the Bihar Shops and Establishment Act, 1953.

A bare perusal of the definition of "Establishment" and "Shop" under Section 2(6) and 2(16) would show that an Association of person who are investors in a particular company would not come within the meaning of the word "Establishment" which means as under :-

> *"2(6) "establishment means an establishment which carries on any business, trade or profession or any work in connection with, or incidental or ancillary to any business, trade or profession and includes-*
>
> *(I) administrative or clerical service appertaining to such establishment;*
>
> *(ii) a shop, restaurant, residential hotel, eating house, theatre or any place of public amusement or entertainment; and*
>
> *(iii) such other establishment as the State Government may, by notification, declare to be an establishment to which the Act applies;*
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> *but does not include a 'motor transport undertaking' as defined in clause (g) of Section 2 of the Motor Transport Workers Act, 1961 (27 of 1961)."*

Similarly the association of the present nature cannot by any stretch of imagination come under the definition of "Shop" under Section 2(16), this Court is, therefore, prima-facie of the opinion that the writ application cannot be treated as framed on behalf of the Association though it may be entertained on behalf of an individual and in this case Mr. Ashok Prasad Verma who has sworn the affidavit and is representing the so called Association.

Although, this Court has formed an opinion prima-facie with regard to the claim of the petitioner's Association to be a Registered Association, however, for the present, this Court is not willing to proceed with the writ application when it is found from the orders passed by Hon'ble Calcutta High Court available at Annexure '2' and '3' of the writ application that the Hon'ble Calcutta High Court has taken up the issues raised in the present writ application at the instance of several applications filed before the High Court by the investors of these companies who are also claiming refund of their deposits made in the various companies of the Alchemist Group. The order dated 21.12.2017 passed by the Hon'ble Calcutta High Court reads as under :-

> "Several applications have been filed by individual investors who, in substance, claim refund of their deposits in whatever form such deposits were made. These applications were filed after we had permitted the main writ petition to be transformed into a representative proceeding and on behalf of different companies of Alchemist Group, it

was submitted before us that they were inclined to make payment in respect of depositors whose deposits had matured. On 21st November, 2017 we had passed an order to the following effect:

"*The applicants in this set of writ petitions and applications are primarily persons who have invested in various financial schemes of different companies belonging to the Alchemist Group. The main prayers of the applicants and writ petitioners involve refund of their deposit in terms of schemes and financial devices through which such deposits were made.*

Mr. Sengupta, learned Senior Counsel and Mr. Sarkar, learned counsel appearing for different companies of that group submit before us that their clients want to repay the dues of the depositors whose deposits have matured. Mr. Sengupta, learned Senior Counsel appearing for some of the group companies have further suggested that the individual applicants may inform particulars of their dues to the Advocate-on-record of these companies, Meghajit Mukherjee in the office of M/s. Dubey and Company, 10, Old Post Office Street, Kolkata-700 001 and on receiving these applications the repayment is made upon verification. It is also submitted by both Mr. Sengupta and Mr. Sarkar that for those depositors whose claims are yet to mature, the companies would be willing to repay the principal amount deposited and such payment would be made on the basis of furnishing an indemnity bond. So far as legality of deposits obtained by the companies are concerned, learned counsel for SEBI has apprised us that the Appellate Board is still in seisin over that issue.

In view of the stand taken by the different companies of Alchemist Group we adjourn further hearing of these writ petitions and *applications till* ***18th December, 2017.*** *In the event any of the applicants desire to accept the offers of the companies concerned, they shall be at liberty to do so on their own volition or choice.*

On the next date of hearing the respective companies of the Alchemist Group shall file individual affidavits disclosing therein the number of settled claims, if any, in the respect of depositors of each company."

As the number of applicant depositors are increasing, it is now the joint submission of the learned counsel appearing for the parties that so far as supervising the process of refund is concerned, these matters may be sent to the Committee. We have laid down the parameters as regards the manner in which payment shall be released or disbursed to the applicant-depositors in our order of 21st November, 2017. We now request the Committee to coordinate the refund process following the seniority of the matured deposits. As regards the claimants who are willing to receive refund of the principal amount only and whose deposits have not otherwise matured, the same principle, that is the seniority of the deposits, shall be followed to the extent practicable. Otherwise, our directives contained in the order of 21st November, 2017 shall be followed.

Let a report be filed by the Committee on 29th January, 2018 stating therein the refund status in relation to claims of the individual applicants.

These matters shall be listed again on 29th January, 2018.

Mr. Sarkar, learned counsel appearing for the aforesaid Companies submitted that in some cases his client has already cleared payment. Let the Committee look into that aspect also and the particulars of payment made in relation to individual applicants shall form

> part of the report the Committee is to file.
> Liberty to mention"

Thereafter on 23.04.2018 the Hon'ble High Court has been pleased to pass the following order :-

> "Today a status report as regards different companies of the Alchemist Group made by the Committee has been submitted by Mr. Nakul Chandra Chaki, Assistant Secretary of the Committee. He submits that Mr. Subrata Mitra, Secretary of the Committee is on leave and could not be present today before this Court. His personal appearance shall stand dispensed with for the present.
>
> In course of hearing today, it has been brought to our notice by Mr. Chaki that lists of investors claiming refund have already been submitted to the Committee by Mr. Meghajit Mukherjee, learned Advocate who represents different companies of the Alchemist Group. The minutes of the proceedings before the Committee held on 19th April, 2018 has been produced before us. The Committee wants to examine the same so that sums claimed can be disbursed to the individual depositors in terms of our earlier direction. This process of disbursement shall be in chronological order of the deposits made.
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> Let the Committee proceed with such process. The Committee shall also give clearance for payment to the individual depositors in that order, to be made by the different companies of the Alchemist Group. We shall take up this batch of writ petitions and the connected applications on **15th May, 2018.** On that date Committee shall submit a report before us on the aspect of progress made in the refund process."

Mr. Jha, learned counsel representing the Reserve

Bank of India has informed this Court that in connection with these matters criminal case has also been lodged and is presently pending which would also be evident from one of the orders enclosed as Annexure '4' to the writ application in which an interim protection had been granted to the petitioner in the said case on a condition of deposit of a sum of Rs. 55,00,000/- and payment thereof to the investors according to the list submitted by the informant.

Learned counsel for the petitioner has submitted before this Court that because the investors falling within the jurisdiction of this Court are also aggrieved in similar manner, the present writ application has been filed seeking identical directions as have been given by the Hon'ble Calcutta High Court.

In the given facts and circumstances of the case, this Court is of the considered opinion that once the Hon'ble Calcutta High Court has taken up the matter and certain orders have been passed which are of substantive nature and directions have been issued in this regard to the Committee formed by the Hon'ble High Court as to how the refund to the investors are to be processed, only because the some of the investors are residing within the territorial jurisdiction of this Court, this

Court is not required to pass any order as it would not only give rise to multiplicity of the litigations and duplication of the orders, there are chances that it’s order may sometimes come in conflict with the orders which are being passed by the Hon’ble Calcutta High Court. This situation has to be avoided in order to maintain judicial disciplines. One thing is clear to this Court that the investors falling within the jurisdiction of this Court may also bring their matter to the notice of the Hon’ble Calcutta High Court and/or Committee formed by the High Court for adequate relief.

This writ application is, thus, disposed off with the observations hereinabove.

(Rajeev Ranjan Prasad, J)

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