

\$~CP-1

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

%

Date of decision: 28.02.2019

+ CO.A(SB) 3/2006

MAFATLAL FINANCE CO. P.LTD. (PH)..... Appellant

Through Mr.Manohar Lal Sharma, Ms. Suman
and Mr.Utkarsh Mudotiya, Advs.

versus

PASUPATI FABRICS LTD.

..... Respondent

Through Mr.Vijay Shankar, Adv. for R-1.

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J. (ORAL)

1. This appeal is filed under Section 10 (F) of the Companies Act seeking to impugn the order dated 29.04.2005 passed by the learned Company Law Board. The appellant had filed a petition before the Company Law Board under Section 111A read with Section 111 (4) of the Companies Act, 1956 seeking an order in favour of the appellant against the respondent company to rectify the shareholder register of the respondent Company and to delete the name from the ownership of 1,49,300 shares allotted to the appellant on the basis of prospectus dated 11.03.1996 containing misstatement. A declaration was also sought that the issue was not 100% underwritten and that the respondents No. 1 to 9 who signed and issued the prospectus dated 11.03.1996 are personally and jointly liable for

consequences and to refund the appellant's entire amount with 24% compound interest. Other connected reliefs are also sought.

2. The case of the appellant is that respondent No. 1 Company came up with a public issue and issued the prospectus on 11.03.1996 in which respondents No. 2 to 9 who were the directors were the signatories to the prospectus. Respondent No. 10 was the lead manager and respondent No. 11 was the Registrar to the public issue. The prospectus clearly stated that the entire public issue offered for subscription has been fully underwritten. The public issue was opened on 06.06.1996 and closed on 15.06.1996. The respondent Company issued notice to the appellant to subscribe to the prospectus and to pay allotment amount for 1,49,300 shares @ Rs.10 each. As the appellant was given his offer for underwriting the public issue, the appellant agreed to subscribe. The appellant paid a sum of Rs. 14,93,000/- and the Company allotted 1,49,300 shares.

3. The case of the appellant is that on 06.02.2004, the appellant came to know about pendency of a litigation and an underwriting dispute against the respondent Company. The appellant contacted their advocate and after discussion, came to know about various fraudulent acts of respondents No. 1 to 11. The sum and substance of the allegation is that there was no proper agreement for the underwriting and a fraud had been played on the petitioner by misleading the petitioner into believing that the share offer was 100% underwritten by the underwriters.

4. Based on the above, the petition was filed before the Company Law Board. It was pleaded that the petition was within limitation as laid down under Section 111 of the Companies Act as it was on 06.02.2014 that the authorised representative-Mr. Ramakrishnan had visited the Supreme Court

and came to know about the hearing of two SLPs filed by Mr.Pukhraj Lunkar and Mr. Kamal Sethia against the respondent Company-Pasupati Fabrics Ltd. It is then that the appellant came to know about the fraudulent acts of the respondent. It is pleaded that limitation runs from the date of knowledge about the fraud i.e. which in this case is 06.02.2014.

5. Respondent No. 1 filed their reply. In the reply, it was pointed out that the appellant had before discharging its underwriting obligation fully satisfied itself and its liability to underwrite the shares. Prior to opening of the issue requisite stationery in the form of application form and prospectus were issued to the appellant who duly accepted the same. It is reiterated that the issue was 100% underwritten by the underwriters. The underwriting agreement was entered into between the appellant and respondent No. 1 on 11.03.1996. It is also stated that the appellant sent a bill for underwriting commission of Rs.37,500/- which was paid by respondent No. 1. The appellant also claimed brokerage which was duly paid on 28.10.1996. It is reiterated that CIFFCO Ltd. and Bharat Bhushan Shares and Stock Brokers Ltd. were the co-managers to the issue. CIFFCO Ltd. had underwritten the issue for Rs. 300 lakhs and Bharat Bhushan Shares and Stock Brokers Ltd. had written the issue for Rs.100 lakhs. M/s. Karvey Consultant Ltd. who was the Registrar to the issue was an underwriter to the extent of Rs.680 lakhs.

6. The Company Law Board by the impugned order concluded that the pendency of the SLPs in the Supreme Court between the underwriters and respondent No. 1 Company has no relevance to the present proceedings. It also concluded that the petition was barred by limitation as it pertains to the year 1996 and the petitioner/appellant has been enjoying all the benefits as a

shareholder. The petition was accordingly dismissed.

7. I have heard learned counsel for the parties.

8. There are two issues that are apparent. First issue is of limitation. The appellant claims that it got knowledge of the fraud played when Mr. Ramakrishnan, the authorised signatory of the appellant visited the Supreme Court and came to know about the SLPs filed by Mr.Pukhraj Lunkar and Mr.Kamal Sethia against the respondent Company-Pasupati Fabrics Ltd. Knowledge is claimed about the fraud from the said date.

9. I may note that on 23.11.2016 this court had noted the request of the learned counsel for the appellant as follows:-

“At request of Mr. Manohar Lal Sharma, learned counsel appearing on behalf of the appellant, the present appeal is not being taken up for hearing today.

Mr. Sharma seeks leave to institute an appropriate application to lead evidence in the present appeal vis-a-vis the question of limitation as well as the assertion that the public issue for equity shares underwritten, had not been underwritten by their represented underwriter.

Leave granted.

Re-notify on 10th January, 2017.”

10. Pursuant thereto, evidence has been filed by way of affidavit of Mr.Vinay Ramakant Kulkarni. All that he states is that on 06.02.2004 Mr.Rama Krishna, the authorised signatory of the appellant company visited the Supreme Court for some legal work and found listing of the SLP of the parties of the parties, namely, Mr.Pukhraj Lunkar and Mr.Kamal Sethia & Ors. On enquires, he learnt about the respondent's misrepresentation and fraud played by the respondent in the public issue and prospectus. In his cross-examination that took place on 02.02.2018, he states that he is not

aware why Mr. Ramakrishan visited the Supreme Court on 06.02.2004. He also states that he has not gone through the paperbook/document of Mr.Pukhraj Lunkar and Mr.Kamal Sethia. He is also not aware about the facts of the two SLPs which were listed on 06.02.2004. That is the sum and substance of the evidence led by the appellant. No worthwhile document is placed on record to show existence of a fraud. The evidence is sketchy. There is nothing to show what was the fraud played on the appellant.

11. Company Law Board has already recorded a finding of fact that the petition is barred by limitation. I see no reason to disturb the findings of fact recorded by the Company Law Board.

12. That apart, it is difficult to believe the version of the appellant. The public issue came in January 1996. The appellant has enjoyed the fruits of the shares allotted to it for more than 8 years and suddenly wakes up in 2004 to claim a fraud based on some hearsay evidence gathered from some proceedings pending in the Supreme Court. Even the copies of the proceedings that were pending before the Supreme Court are not sought to be placed on record.

13. There is no worthwhile and credible evidence led before this court to come to a different conclusion.

14. There are no reasons to interfere in the impugned order.

15. There are no substantial questions of law which would persuade this court to exercise jurisdiction under Section 10 (F) of the Companies Act.

16. The appeal is dismissed.

JAYANT NATH, J

FEBRUARY 28, 2019rb