

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

COMPANY APPLICATION No. 12 of 2019

ORDER:

This Company Application is filed for the following relief:

“....to issue appropriate directions to the 1st respondent to disburse the amounts to the applicants in accordance with the orders passed by this Hon'ble Court dated 18.07.2018 in CA No.249 of 2018 in CP No.59 of 1996.”

The brief facts for the purpose of disposal of this Company Application are as under:-

The applicants are the shareholders of M/s.Roofers Associates Limited, a Company registered under the Companies Act, 1956 (for short 'the Act'). The said Company was directed to be wound up *vide* order dated 31.10.2000 in CP No.59 of 1996, and the Official Liquidator took possession of the same on 12.03.2001. Accordingly, on his finding that there was surplus money available with the Company in liquidation for settlement of list of contributories, the Official Liquidator in terms of Rule 180 of the Companies (Court) Rules, 1959 (for short 'the Rules'), issued a notice to the contributories on 30.01.2018 to submit their original share certificates on or before 16.02.2018. In the said list, names of the applicants were shown at Serial Nos.31 to 33 and respondent No.2 at Serial No.23. In the said notice, it is mentioned that applicant Nos.1 to 3 had 10000, 35000 and 20000 shares respectively. Thereafter, applicant No.3 addressed a letter dated 16.02.2018 to the Official Liquidator stating that the share

certificates are in possession of the Company in liquidation. Accordingly, on 08.03.2018, notice of final settlement of list of contributories was issued by the Official Liquidator as required under Rule 184 of the Rules calling for objections, but, no objections were received. Therefore, on 13.03.2018, the Official Liquidator filed C.A.No.249 of 2018 to approve the final settlement list of contributories, to accord permission for declaring return of contributories etc., and this Court allowed the same by order dated 18.07.2018 accepting the report of the Official Liquidator determining a sum of Rs.77.50 ps. against each share of Rs.10/- to be paid to the contributories. In pursuance of the same, notice in Form No. 140 was issued to the individual contributories including the applicants to apply for payment by producing the original share certificates along with the receipt.

Further, applicant No.1 addressed a letter dated 26.11.2018 to the Official Liquidator and submitted personal Indemnity Bond on a Non-Judicial Stamp Paper worth Rs.100/-. Similarly, applicant Nos.2 and 3 submitted necessary documents. Thereafter, the Official Liquidator sent a letter dated 21.12.2018 to applicant No.1 for clarification on the aspect of submitting indemnity bond in the place of share certificates on the ground that they are lying with the company. The said letter was responded to by applicant No.1 on 08.01.2019. The Official Liquidator on finding that there are rival claims, directed the applicants to seek appropriate orders from the Company Court. In the circumstances, the applicants filed the present Company Application seeking a direction to the Official

Liquidator to disburse the amounts in relation to the shares standing in their names as they are contributories.

The Official Liquidator filed a detailed counter-affidavit stating that the share certificates were not transferred in favour of her husband nor respondent No.2 and the Share Transfer Form 7-B submitted by respondent No.2 is not valid as the competent authority i.e. ROC Hyderabad has not certified the same and no share transfer stamps have been pasted on it. He further stated that the share transfer form does not disclose the details of respondent No.2 and that the shares stand in the name of the applicants, as such, it is for respondent No.2 to prove that her husband paid the amounts to the applicants and took back the original share certificates.

Respondent No.2 filed a counter-affidavit denying the allegations of the applicants by stating that there was no practice of the Company in liquidation keeping the share certificates of its shareholders in its custody.

Sri M.V.Pratap Kumar, learned counsel for the applicants submits that on account of closeness between the applicants and late husband of respondent No.2, their share certificates were lying with the Company in liquidation. He further submits that the applicants are *bona fide* owners of the shares and their names appear in the share register, as such, they are entitled to receive monies as contributories and respondent No.2 has no manner of right to receive the same and the grounds mentioned in her letter

dated 16.11.2018 are unsustainable. He places reliance on the judgments of Gauhati and Madras High Courts in **K.L.Goenka and another Vs. S.R.Majumdar**¹ and **V.Rajagopal Vs. Salem Provident Society Limited**² respectively.

On the other hand, Sri Prabhakar Sripada, learned counsel for respondent No.2 submits in usual persuasive manner that it is for the applicants to take necessary steps for obtaining the share certificates/duplicate share certificates, which are not in their possession, and it is for them to explain in what circumstances and in what manner and for what purpose, the share certificates were lying in the custody of husband of respondent No.2. He specifically submits that on repayment of the monies borrowed by the Company in liquidation, husband of respondent No.2 collected back the share certificates along with transfer deed, however, the transfer could not be effected in the share register on account of chronic ill-health of husband of respondent No.2. He also submits that the Official Liquidator ought to have decided who is entitled to the amounts with respect to the subject shares rather than directing the respective parties to approach this Court in the absence of share certificates. In support of the same, he places reliance on the judgment of the Honourable Supreme Court in **Shripal Jain Vs. Torrent Pharmaceuticals Ltd. and others**³. In the circumstances, he prays for dismissal of the Company Application.

¹ AIR 1958 Gauhati 86

² AIR 1963 Madras 287

³ 1995 Supp (4) Supreme Court Cases 590

It may be noted that the claim of the applicants is for 65000 shares, whereas, the claim of respondent No.2 is limited to 55000 shares from out of 65000 shares i.e., 10000/10000 shares from applicant No.1, 25000/25000 from applicant No.2 and 20000/20000 from applicant No.3. There is no dispute that the share certificates stand in the name of the applicants and their names appear in the share register.

A perusal of the letter, dated 16.11.2018, discloses that the applicants have acquired the shares and details of the same are hereunder:

Sl. No.	Name of the Shareholders	No.of shares transferred to	No.of shares allotted	Distinctive Nos.
1.	Master Deepak A.V.	G.S.N.Murthy	5000	264001-269000
2.	Mrs.N.Padmaja Rani	G.S.N.Murthy	5000	259001-264000
3.	Ms.A.Swapna	G.S.N.Murthy	5000	259001-264000
4.	Sri Kolli Vijaya Kumar & K.Vijay Pradeep	G.Satyanarayana Murthy	10000	306501-316500
5.	Sri P.Vijay Kumar	V.Timber	10000	146001-156000
6.	Sri B.N.Reddy	V.Timber	5000	301501-306500
7.	Sri N.Jayaram	G.S.N.Murthy	5000	120001-125000
8.	A.Venkateshwara Rao	V.Timber	10000	34501-44550

Respondent No.2 claims that her husband had acquired/purchased the above said shares from the applicants, however, he did not get the same transferred in his name. She specifically claims that she is in possession of the original share certificates along with transfer deeds, which were not used by her husband for effecting necessary changes in the share register.

A perusal of the share transfer form executed by A. Rama Chander Rao on behalf of A.V.Deepak, minor, discloses that it is stamped on 08.12.1993 and the date of its execution was 01.03.1994. Likewise, all other share transfer forms bear the same name. Further, a perusal of copies of the share certificates discloses that the shares were transferred in the name of the applicants on 24.03.1994.

It may be noted that the names appearing in the share certificates are the ones, whose names have been mentioned by respondent No.2 in her letter dated 16.11.2018. In other words, the transfer deeds would entitle the husband of respondent No.2 to get the shares transferred in his name. As a matter of fact, no transfer deeds were executed by the respective parties to effect transfer of the shares.

It may be noted further that in the letter, dated 16.11.2018, respondent No.2 had specifically made a claim that initially, she did not find the share certificates, however, on search being made, she found original share certificates along with the transfer forms. Inasmuch as respondent No.2 does not have the share transfer forms signed by the applicants, her claim that her husband came to acquire the shares by paying the monies on account of the pressure that is brought on her husband does not stand.

The word 'Contributory' is defined under Section 428 of the Act (now repealed), which reads as under:

Section 428: definition of "contributory".

The term “contributory” means every person liable to contribute to the assets of a company in the event of its being wound up, and includes the holder of any shares which are fully paid-up; and for the purposes of all proceedings for determining, and all proceedings prior to the final determination of, the persons who are to be deemed contributories, includes any person alleged to be a contributory.”

The definition of the word ‘Contributory’ does not leave any manner of doubt that it is only the holder of the shares, though not the physical holder of the shares, thereby, it means, the persons whose names are entered in the Register of Members maintained by the Company under the Act.

It may also be noted that Section 108 of the Act prohibits any transfer of shares in any one’s name without there being a valid transfer deed. Indisputably, the transfer deeds which would entitle respondent No.2 for making a claim before the Official Liquidator do not support the claim of respondent No.2. She is also not entitled as successor in interest/legal heir of her late husband, as, admittedly, shares stand registered in the name of the applicants and there are no valid transfer deeds in her favour or in favour of her husband. Merely because respondent No.2 possesses the share certificates, that by itself, does not entitle her for making a claim or being entitled to receive the monies of the Company in liquidation as a contributory.

It is the duty of the Official Liquidator to settle the list of contributories taking into consideration the rights of the contributories, who are entitled to receive the money. In the facts of the present case, the decision of the Official Liquidator in refusing

to recognize Respondent No.2 as 'contributory' cannot be found fault.

In those circumstances, both on facts and in law, the claim of respondent No.2 to receive the amounts with respect to the subject shares, which are in the name of the applicants, is unsustainable.

Accordingly, the Company Application is allowed.

Inasmuch as respondent No.2 does not have any right to hold the share certificates in her favour, the same shall be made over to the Official Liquidator within a period of 30 days from today. In default, the Official Liquidator shall accept the indemnity that is to be executed by the applicants and shall disburse the money as determined by him in the final adjudication.

CHALLA KODANDA RAM, J

Dt:30.01.2020

kdl