

IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
ORIGINAL SIDE

Present :

THE HON'BLE JUSTICE ARINDAM MUKHERJEE

C.S. No.233 of 2017

GA 2 of 2022

METAL BOX INDIA LIMITED

VS.

JYOTSANA PODDAR

For the Plaintiff : Mr. Shyamal Sarkar, Sr. Adv.
Mr. Meghajit Mukherjee
..... Advocates

For the Defendant Mrs. Suparna Mukherjee
Mr. Debdut Mukherjee
Ms. Priyanka Sharma
..... Advocates

Heard on : 19.12. 2019, 24.12.2019, 15.01.2020,
21.01.2020, 16.03.2020, 10.11.2021 and
25.04.2022.

Judgment on : 4th May, 2022

Arindam Mukherjee, J:

1. The plaintiff is a company within the meaning of the Companies Act, 2013 with its registered office at New Delhi and an office at Kolkata but outside the Ordinary Original Civil Jurisdiction of this Court.
2. The defendant is the widow of one Vishwanath Poddar, a shareholder of the plaintiff-company. The defendant is a resident of 4B/S, Mayur Apartments, 3A, Loudon Street, Kolkata- 700017 within the Ordinary Original Civil jurisdiction of this Court.

3. The plaintiff-company was declared a sick company on 27th May, 1988 under the provisions of Sick Industrial Companies (Special Provisions) Act, 1985 (hereinafter referred to as the SICA) by the Board of Industrial and Financial Reconstruction (BIFR). Industrial Credit and Investment Corporation (now ICICI Bank Limited) was appointed as the Operating Agency (OA) to prepare a Rehabilitation Scheme for revival of the plaintiff in accordance with the provisions of the SICA.
4. The said Vishwanath Poddar had filed a writ petition, being W.P. No.3569 of 1993 (Vishwanath Poddar vs. Board of Industrial and Financial Reconstruction & Ors.) before this Hon'ble High Court which was disposed of by an order dated 5th September, 1994. Another shareholder had challenged the said order in the Hon'ble Supreme Court in SLP (Civil) No. 10187 of 1995 wherein an order was passed directing the BIFR to formulate a revival scheme and to expeditiously conclude the proceedings.
5. The BIFR sanctioned a rehabilitation scheme on 10th June, 1996 (1996 Rehabilitation Scheme). The said 1996 Rehabilitation Scheme was challenged by the plaintiff before the Appellate Authority for Industrial and Financial Reconstruction (hereinafter referred as AAIFR). AAIFR by an order dated 6th March, 1997 approved the 1996 Rehabilitation Scheme with certain modifications. The order dated 6th March, 1997 was challenged in C.W.P No.1797 of 1997 before the Delhi High Court wherein by an order dated 31st July, 2000 the matter was remanded back to AAIFR for reconsideration. AAIFR ultimately approved a scheme on 10th October, 2000 which was different even from the

updated 1996 Scheme submitted by the Operating Agency (OA) on 3rd October, 2000. The order of AAIFR dated 10th October, 2000 was subject to challenge in a writ petition being W.P. (C) No. 1516 of 2001 (Metal Box India Ltd. & Anr vs. AAIFR & Ors) before the Delhi High Court which was disposed of by an order dated 16th July, 2001 directing implementation of the upgraded 1996 Scheme with certain modifications.

6. At the time when the scheme was sanctioned on 16th July, 2001 the paid up share capital of the plaintiff had stood increased from Rs.15.48 crores to Rs.20.23 crores in view of contributions brought in by the promoters of the plaintiff-company between 2000 and 2006. Ultimately after few subsequent rounds of litigation, the AAIFR passed an order on 4th December, 2007 allowing reduction of the existing paid up share capital of the plaintiff-company by 99 per cent. As a consequence, thereof, equity share capital and preference share capital of the plaintiff-company was reduced. The equity share capital with which we are concerned was reduced to Rs.20.23 lakhs from Rs.20.23 crores.
7. Thereafter, the plaintiff filed the order dated 4th December, 2007 along with Form 21 to record the reduction of share capital with the Registrar of Companies. The plaintiff also issued and allotted to all its equity shareholders one equity share of the face value of Re.1/- each for every 10 equity shares of Rs.10/- each held by the shareholders as on 29th December, 2007. So the said Vishwanath Poddar, the husband of the defendant herein was according to the plaintiff issued and allotted 50

equity shares with face value of Re.1/- each for the 500 shares of Rs.10/- face value as held by him in the plaintiff-company.

8. The Rehabilitation Scheme which according to the plaintiff was sanctioned under the provisions of Section 18(2) (f) of SICA, 1985 was operative till 30th June, 2018. This date has been subsequently extended till 31st March, 2022.
9. On 6th November, 2016 the plaintiff received a letter from defendant informing the death of the original share holder with a request to transfer his standing shares to the defendant and further requested to issue the duplicate share certificate. After compliance of the required procedure, by a letter dated 10th February, 2017 the plaintiff forwarded the duplicate certificates recording the name of defendant as the shareholder of 50 shares of face value of Re.1/- each in lieu of 500 shares held by the defendant's deceased husband, the certificate whereof was lost.
10. The defendant by a letter dated 19th February, 2017 refused to accept the said certificates and demanded that 500 shares of face value of Rs.10/- should be issued in lieu of share certificate of 50 shares of face value of Re.1/- each. The defendant on 11th March, 2017 threatened to institute criminal proceedings against the plaintiff and its directors and thereafter on 21st March 2017 filed complaint before Security and Exchange Board of India (hereinafter referred as SEBI) alleging fraud by the plaintiff. This prompted the plaintiff to file this suit on or about 22nd September, 2017 claiming a declaration that the paid up share capital of the plaintiff stood reduced to Rs.20.23 lakhs on and from 10th

June, 1996 by virtue of order dated 4th December, 2007 passed by the AAIFR with a further declaration that the plaintiff is entitled only to 50 equity shares of face value of Re.1/- each with effect from 10th June, 1996 i.e., Rs.50 only. A consequential relief of permanent injunction restraining the defendant from claiming any share in excess of 50 shares has also been sought for.

11. The defendant by filing her written statement has denied that the defendant is only entitled to 50 equity shares of Re.1/- instead of 500 equity shares as held by her late husband. There is, however, no counter claim.
12. The following issues were settled from the order dated 11th December, 2018:-

-:I S S U E S:-

“1.- Whether the paid up equity share capital of the plaintiff stood reduced by 99% in terms of the Order dated December 4, 2007 passed by the Learned Appellate Authority for Industrial and Financial Reconstruction?

2.- To what other reliefs the plaintiff is entitled to?

3.- Whether the order dated December 4, 2007 passed by the Appellate Authority for Industrial and Financial Reconstruction accepting the reduction of the existing paid up share capital of the plaintiff company by 99% on equity capital and 99% on the preference share capital is valid and binding on the defendant?

4.- Whether the suit is maintainable in this Hon’ble Court as framed?”

13. The documents disclosed as plaintiff's documents (PD) 1 to 15 were admitted by the parties and were marked as exhibits A to O. The parties have not laid any evidence and wanted this Court to pronounce its judgment on the basis of the admitted facts and documents and the arguments advanced.
14. Issue no.3 which pertains to maintainability of the suit is taken up first. Although, the issue of jurisdiction of this Court and limitation have not been raised separately but same is covered by issue no.3. The defendant being a resident of Loudon Street within the Ordinary Original Civil jurisdiction, the suit against the said defendant can be filed and maintained in this Court. The original share holder i.e., the husband of the defendant died on 22nd June, 2012. The defendant's first assertion of right claiming 500 shares was on 6th November, 2016. Pursuant thereto certain letters were exchanged between the parties. Ultimately, the plaintiff by a letter dated 10th February, 2017 issued 50 shares of Re.1/- each to the defendant which she refused to accept and demanded 500 shares. The defendant thereafter by a letter dated 11th March, 2017 once again requested the plaintiff-company to issue 500 shares which was followed by a complaint to Security & Exchange Board of India (SEBI). The suit was instituted on or about 22nd September, 2017 is within limitation. In respect of the relief(s) claimed the defendant is the sole party necessary. The suit is, therefore, maintainable as framed and issue No.3 is decided in favour of the plaintiff.

15. Issue No.1 and 2 are taken up together and being interlinked, are decided as under.
16. Reduction of share capital of company is permissible under the Companies Act, 1956 as also the Companies Act, 2013 by following a specific procedure as laid down therein. This decision is taken after affording the individual share holder to participate in the decision making process wherein they are free to give their views and the majority view or opinion prevails. If the decision to reduce share capital is approved the consequences follows obviously by following the statutory formalities. In the instant case the reduction of share capital in the plaintiff-company has taken place not by such process but as a part of a rehabilitation scheme sanctioned by AAIFR in the process of reviving the plaintiff-company. The sole object while sanctioning or approving a scheme on a company being referred to under SICA is to rehabilitate and if possible to revive the company from the stage for which the company had to be referred to BIFR under SICA. The individual share holder though had a right to participate in the proceedings before BIFR or AAIFR and express their views but the same was in a limited score unlike their participation to reduce share capital under the Companies Act, 1956 being the act prevalent at the time when reduction of share capital in the plaintiff-company was allowed. A rehabilitation scheme like the one introduced in the plaintiff-company is sanctioned under the provisions of Section 18 (2) (f) and Section 18 (4) of the SICA. The scheme becomes binding on an individual share holder for the purpose of reviving the company till the scheme is

successfully worked out or implemented. The scheme is always open to modification to accommodate the difficulties faced in course of implementing the scheme. Any provision including the step approved for reduction of share capital like that in case of the plaintiff remains open till the scheme is successfully worked out. It may so happen that the scheme fails and the company is directed to be wound up. The act of reduction of share capital under a scheme like that in the plaintiff is a contingent act, which fructifies on the successful implementation of the scheme. The reduction of share capital allowed under the scheme, therefor, cannot be said to have achieved finality during the implementation of the scheme. This act of reduction of share capital in the plaintiff-company pursuant to the scheme will crystallize only on the scheme being successfully worked out.

17. The SICA, 1985 stood repealed by the Sick Industrial Companies (Special Provisions) Repeal Act, 2003. The 2003 Act was brought into effect on 1st December, 2016 by virtue of a notification dated 25th November, 2016. Under the provisions of Section 4 (b) of the 2003 Act, all proceedings pending before the BIFR and AAIFR stood abated with its promulgation. The 2003 Act, however permitted a company whose reference stood abated due to repeal of SICA, 1985 to make a reference under Part VI – A of the Companies Act, 1956 by making amendment to the Companies Act, 1956 by the Companies (Second Amendment) Act, 2002. The 2002 amendment to the Companies Act, 1956 was challenged. The challenge was decided by a judgment reported in **2010 (11) SCC 1 [Union of India v. R. Gandhi, President, Madras Bar**

Association] which led to certain modifications. The Companies Act, 1956 has been subsequently repealed by introduction of Companies Act, 2013. The SICA, 1985, however, remained in operation till the 2003 Act was brought into operation on 1st December, 2016. The Insolvency and Bankruptcy Code, 2016 (in short IBC) was also introduced from 1st December, 2016. Section 252 of IBC amended the provisions of Section 4 (b) of the 2003 Act. Under the amended provision a reference in terms of Section 4 (b) has to be made before the National Company Law Tribunal (in short NCLT) under the IBC. Thus the scheme which was sanctioned by the AAIFR in respect of the plaintiff-company remained in operation even after the change in law, only the forum to approach for any direction to work out the implementation of scheme in case of any difficulty changed. The scheme did not achieve finality till it was successfully worked out even after the change in law. The reduction of share capital in the plaintiff-company in terms of the scheme remained a contingent act.

18. A reference under SICA, 1985 remains pending till such time the scheme sanctioned/approved has been worked out successfully or till the BIFR gives an opinion to wind up the Company as held in the judgment reported in **2016 (4) SCC 1 [Madras Petrochem Ltd. and Anr. v. Board for Industrial and Financial Reconstruction and Ors.]** (at paragraph 51 thereof).
19. The suit has been admittedly filed after the introduction of IBC and repeal of SICA, 1985 by the 2003 Act. Section 231 of IBC bars the jurisdiction of Civil Courts in respect of matter under its domain. After

repeal of SICA, the plaintiff has to approach the appropriate authority under IBC for implementation of the scheme as the reference regarding the plaintiff-company remained pending as on the date of institution of the suit. Despite the bar to jurisdiction of Civil Court, the Authority under IBC cannot pass a declaratory decree inter se between the company and an individual share holder as in the case in hand. This is also the reason for holding the suit to be maintainable.

20. In the instant case the reduction of share capital was brought by way of a Rehabilitation Scheme framed under Section 18 (2) (f) and Section 18 (4) of the SICA, 1985 and not by following the procedure available under the Companies Act. The BIFR and the AAIFR under the provisions of Section 18(2) (f) and Section 18 (4) are competent to formulate a composite scheme permitting reduction of share capital for rehabilitation of the company. This fact is not in dispute. In such factual background the reduction in share capital permitted under the Rehabilitation Scheme shall continue to hold good till the scheme is in operation or in such time it is successfully implemented. The situation will be different if the implementation is not successful and an order of winding up of the plaintiff-company is ultimately directed. It is also possible that the Rehabilitation Scheme permitting reduction of share capital may be further modified during the course of implementation which may have an effect over the portion of the scheme which permits reduction of share capital. It can, therefor, be said that still the scheme has been successfully implemented, the reduction of share capital

permitted under the said scheme does not achieve finality and is subject to being further modified.

21. The plaintiff has sought for a decree for declaration and injunction. Under the provisions of Specific Relief Act, 1963, declaration is ordinarily granted in respect of crystallized rights but can also be granted with regard to a Contingent right as held in the Division Bench judgment of this Court reported in **AIR 1980 Cal 45 [Smt. Maya Basak vs. Smt. Kalidasi Dassi and another]**. In the facts of the instant case till the Rehabilitation Scheme has not been successfully implemented, the plaintiff's right to claim a declaration that the defendant is entitled only to the reduced number of shares cannot be granted. The consequential injunction cannot also be granted in the facts of the case. Even considering the fact that the plaintiff is seeking a declaration based on a contingent right, the same cannot be granted as such right is not a simplicitor right inter se between two individuals or group of individuals arising out of private documents existing in between. The scheme cannot be treated as a document of like nature. The scheme involves several other rights of diverse nature and not individual rights for which a declaration can be sought for. That apart by passing a declaratory decree regarding the reduction of share capital this Court will be endorsing an official seal with regard to a right which is subject to variation as aforesaid.
22. The Rehabilitation Scheme which permitted reduction of share capital was in operation at the time when the suit was instituted. The scheme remained in operation till 31st March, 2022. After 31st March, 2022

the operation period of the scheme can either be extended by a competent forum or the scheme will be held to have failed. In either case, the right as to reduction of share capital in favour of the plaintiff-company does not crystallize. Thus, taking the fact scenario at the time when the suit was instituted as also the subsequent events that may occur after 31st March, 2022 it is evident that the reduction of share capital permitted under the scheme has not crystallized. The Court always retains a discretion under the provisions of Section. 34 of the Specific Relief Act, 1963 to give a decree of declaration if it is satisfied that the plaintiff is entitled to a character or right. Since, the right in favour of the plaintiff has not crystallized and the plaintiff is not entitled to a declaration of a legal character, no decree of declaration can be passed in the facts of the case. The consequential injunction cannot also be granted independently of the decree of declaration.

23. The suit, therefor, fails and the same is accordingly dismissed.
24. Since the suit is dismissed, the connected application filed by the defendant after conclusion of hearing also stands dismissed.

Urgent photostat certified copy of this judgment and order, if applied for, be supplied to the parties on priority basis after compliance with all necessary formalities.

(ARINDAM MUKHERJEE, J.)