

**BEFORE THE COMPANY LAW BOARD
PRINCIPAL/NEW DELHI BENCH
NEW DELHI**

C.P. No. 31/MB/2013 and
C.P. No. 10/MB/2014
C.A. No. 29(C-1)/2015 and
C.A. No.234(MB)/2013

**PRESENT : JUSTICE D.R. DESHMUKH
CHAIRMAN**

[C.P. No. 31/MB/2013 and C.P. No. 10/MB/2014 under sections 397, 398,399, 402, 403 and 406 of the Companies Act, 1956 and under sections 58 & 59 of the Companies Act 2013]

In the matter of

Mohit Khullar & Ors. Petitioners

Versus

SVC Resources Ltd. & Ors. Respondents

AND

S.V.C.. Resources Ltd. & Ors. Petitioners

Versus

Ashok Banwarilal Gupta & Ors. Respondents

Present on behalf of Parties:

Shri Anil Airi,, Advocate for Petitioner
Ms. Shreya Bhandari, Advocate for Petitioner

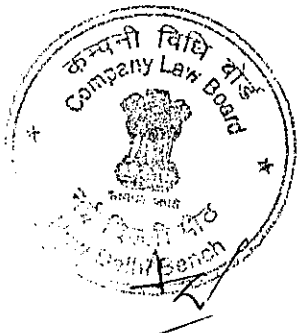
ORDER

(Pronounced in open court on 4/06/2015)

This order governs C.P. No. 31/MB/2013 and C.P. No. 10/MB/2014.

2. In CP No. 31/MB/2013 the Petitioners have alleged various acts of oppression and mismanagement on the part of the Respondents whereas

[Signature] (1)



CP No. 10/MB/2014 is for annulment of the preferential allotment of 1,08,44,426 equity share at a price of Rs. 2.63 per share on 08.05.2013 in favour of Sushma Gupta and Ashok Gupta, Ashok Gupta HUF, Sushanku Enterprises Ltd, Ashok B.Gupta, Akshat A.Gupta and Ashok Gupta, as against their loans and advances to the company and also to declare the allotment of 2,97,00,000 equity shares at Re.1/- per share on 05.08.2013 in favour of M/s. Subhtex(India) Ltd, as null and void being in violation of section 81(3) of the Companies Act, 1956.

3. The Board of the company M/s. S.V.C. Resources Ltd. (henceforth the company) was reconstituted on 11.01.2014. The resolution passed in the EOGM dated 11.01.2014 was directed to be implemented by order dated 04.04.2014 passed by me whereby the then existing Board of Directors of the company was superseded by the new Board of Directors in the EOGM dated 14.01.2014.

4. Thus, in view of the reconstitution of the new Board of Directors and the management of the company falling into their hands, all the allegations relating to oppression and mismanagement required no consideration and the only question that remains for consideration is the annulment of the allotment of the equity shares mentioned above.

5. The following submissions of Shri Anil Airi, ld. Counsel for the Petitioners was also recorded in the order dated 05.01.2015.

“ Shri Anil Airi, ld. Counsel for the Petitioners submitted that in view of the fact that the erstwhile Board of Directors has already been superseded by the new Board of Directors which is in control of the management, the only issues which remain for consideration are the issues raised in CA No.234 and CA No.108.”

6. However, it needs to be mentioned here that CA No.108/CLB/MB/2013 had already been disposed of by me by a detailed order dated 11.12.2013. Therefore, besides annulment of the equity shares mentioned above, the only question that remains adjudication is CA No. 234/MB/2013 relating to the allotment of equity shares mentioned above.



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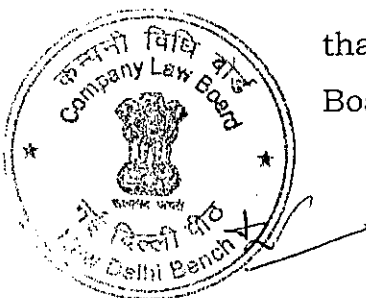
7. On 02.05.2013, the following direction was given by Shri A.K. Tripathi, Member(Judicial), Mumbai Bench, who was then seized of the matter.

“(ii) The Respondents are restrained from alienating, transferring and/are creating any third party interest over the immovable assets of the company. However, it is made clear that the secured creditors shall be free to recover their dues from the charged assets of the Company, if any, as per law.

“(iii) No further liability shall be incurred by the Ist Respondent Company save and except it is bonafidely required in its interest and that too with prior permission of the Bench.”

8. The Petitioners averred that the purported allotment of shares is irregular and illegal as there is no proof of loan/consideration provided by the Respondent in the records of the R-1 company and shares were allotted without holding any AGM or EOGM. The fact that no AGM or EOGM has been held for the said purported allotments is apparent from the websites of Bombay Stock Exchange and ROC, which does not display any intimation of holding of any general meeting or passing of any such special resolution. Moreover, R-1 has not disclosed any approval by the Central Government before converting the loans into shares. Thus, the provisions of section 81(3) have not been complied with by R-1 while making the purported allotment to Subhtex (India) Ltd. The Petitioners further contended that the transfer of shares on 08.05.2013 to the promoters/relatives and group companies for loans and advances is in violation of the order dated 02.05.2013 vide which the Respondents were restrained from incurring any further liability on or alienating the assets of the company.

9. The Respondents on the other hand contend that the said allotments were done in compliance with the provisions of the Companies Act 1956 and therefore, could not be questioned. It was further stated that the power of cancellation of shares vests in the High Court and this Board has no jurisdiction to reduce the share capital of the company.

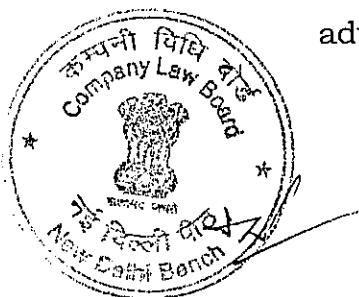


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10. On the date of the final arguments, i.e. on 28.04.2015 and 18.05.2015 the Respondents chose not to appear either in person or through a lawyer before this Board and thus no arguments were advanced from their side in rebuttal of the Petitioner' arguments.

11. A perusal of the record makes it obvious that the allotments were made without the approval of the Central Government and without the members approval as per Section 81 of the Companies Act, 1956 and are not in compliance with takeover and ICDR Regulations of SEBI. It is also pertinent to note that no loan has been shown against the allotments made, as per section 81(3) of the Companies Act, 1956. A detailed affidavit in this regard has been filed by the Petitioners in C.P. No.10(MUM) of 2014 on 05.11.2014 bringing forth the malafide of the said allotments. In the light of the facts stated in the petition and applications, the said allotments dated 08.05.2013 and 05.08.2013 are thus liable to be cancelled. It may be noted that the cancellation of such allotment does not tantamount to reduction of capital pursuant to Section 100 of the Companies Act, 1956 since the same has not been shown as a loan in any of the Bank statements of the company. No Bank Statement reflecting the loan has ever been produced by any of the Respondents before this Board. The Bank Statements have been annexed alongwith the affidavit dated 05.11.2014.

12. In the light of the above, on consideration of the arguments advanced by the Petitioner and on perusal of the record, in my considered opinion, a bare perusal of the Annual Report of R-1 for the year ending March 2012, the Annual Report of R-1 for the year ending March 2013 as well as the Balance Sheet of Subhtex (India) Ltd. for the year ending March 2012 shows no liability owing or borrowing from Subhtex by R-1. In the absence of a loan, there can be no allotment by way of conversion under section 81(3) in favour of Subhtex. Regarding the shares allotted to relatives/promoters and group companies for loans and advances on 08.05.2013, they are clearly in violation of the order dated



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02.05.2013 restraining the Respondents from incurring any liability the assets of the R-1 company.

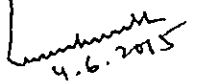
13. I have therefore no hesitation in coming to the conclusion that the following allotment of shares by the R-1 company is illegal and therefore stands cancelled:-

- (i) 1,08,44,426 equity shares on 08.05.2013 in favour of Sushma Gupta and Ashok Gupta, Ashok Gupta HU Sushanku Enterprises Ltd, Ashok B.Gupta, Akshat A.Gupta and Ashok Gupta, and
- (ii) 2,97,00,000 equity shares on 05.08.2013 in favour of M/s Subhtex(India) Ltd.

14. In the light of the above order, I order rectification of register of members of the company accordingly under section 111(3) of the Companies Act 1956 as sought by the new Board of Directors in the Company Petition CP No. 10 of 2014. I also grant extension of six months to the company to hold the AGM and file the Annual Reports for the year ended 31.03.2014 as sought in the CA No.29 of 2015.

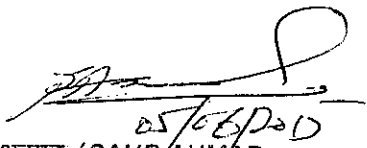
15. Both CA No. 29(C-1)/2015 and CA No.234(MB)/2013 alongwith C.P. No. 31/MB/2013 and C.P. No. 10/MB/2014 are disposed off. The members of the erstwhile Board of Directors of the company shall hand over all records of the company in their possession to the new Board of Directors forthwith.

Under Regulation 29(4) of
the CLB Regulations, 1991


[Justice D.R. Deshmukh]
Chairman

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On.....27/6/2015.....




सऊद अहमद / SAUD AHMAD
न्याय पीठ अधिकारी / Bench Officer
कम्पनी विधि बोर्ड / Company Law Board
भारत सरकार / Govt. of India
नई दिल्ली / New Delhi