

SUDHARSHAN TRADING COMPANY LTD.

A

v.

OFFICIAL LIQUIDATORS AND ORS.

MAY 13, 1994

[R.M. SAHAI AND N. VENKATACHALA, JJ.]

B

Companies Act, 1956 : Sections 391, 433, 434, 439, 443—Subsidiary Company conducting Chits—Default in payment to subscribers—Directions given.

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This Court by its judgment dated 14.5.1993*, while deciding the dispute in respect of a Chit Fund, between the appellant holding company and its subsidiary company, on the one hand, the Subscribers' Association on the other, gave certain directions. The Subscribers' Association filed the interim application alleging non-compliance of some of the directions.

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Disposing of the application and clarifying the order dated 14-5-1993, this Court

HELD : 1. The Holding Company shall pay interest at the rate of 25% on Rs. 5 lakhs from 3.11.1989 to 5.4.1990 minus the interest which has been earned on this amount and becomes payable to Subscribers' Association. [93-E]

E

2. The 25% interest directed to be paid by the Holding Company under orders dated 14.5.1993, was towards compensation on the total deposits made by the Subscribers' Association in the course of adjusting equities between the parties. The Holding Company after deducting income tax has deposited the same with the Income-tax Department. It shall be open to the subscribers to apply to the Income-tax Department for refund of the same on the basis of this Order. [93-F-G]

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3. As regards the direction to pay interest at the rate of 12% the subscribers were entitled to the interest from the date when their claim applications were decided by the High Court. Consequently, the Holding Company shall pay interest on amounts payable to the subscribers on account of subscriptions made by them to Chit Fund from 6.10.1989 to 20.2.1991 in addition to the interest already paid by them thereon from

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A 21.2.1991 to 23.7.1993. [93-H, 94-A]

4. All subscribers who were shown as Members of the Subscribers' Association in the list filed by them in 1987 before the High Court have been paid. The membership of the Association cannot be enlarged. [94-F-G]

B **N.P.V. Ramaswamy Udayar etc. v. The All India Subscribers' Association & Ors.*, [1993] 3 SCC 233, directions given therein, clarified.

CIVIL APPELLATE JURISDICTION : I.A. No. 2 of 1993.

IN

C Civil Appeal No. 2866 of 1993.

From the Judgment and Order dated 21.2.91 of the Kerala High Court in C.M.P. Nos. 2170/90 & 596/91 & 597 of 1991 in M.F.A. No. 518 of 1981.

D R.K. Jain, A.Mariarpurtham and P.N. Puri (NP) for the Appellant.

K.K. Venugopal, E.M.S. Anam, A. Sasiprabhu, A.T.M. Sampath, S.C. Birla (N.P.) for the Respondents.

E The following Order of the Court was delivered :

When Order dated 14th May, 1993 was passed by us, we thought that we have succeeded in bringing quietus to the long drawn litigation between an affluent and prosperous holding Company and poor and suffering subscribers to the Chit Fund of the subsidiary company. We felt, however, disturbed when we saw attempts made on the side of the subsidiary company to avoid payment on certain counts to the Subscribers' Association and attempts made on the side of Subscribers' Association to have its members increased and get payments made to all such members to the detriment of other large body of subscribers. Whatever that be, we heard **G** Shri R.K. Jain Senior Counsel for the Subscribers' Association, and Shri K.K. Venugopal, Senior Advocate for Sudharshan Trading Company, on several days and at length. Five claims have been advanced on behalf of the Subscribers' Association :

H (1) They were entitled to interest on deposit of Rs. 5 Lakhs from 3rd November, 1989;

- (2) Direction to pay 25% interest on the deposit made by the subscribers being by way of compensation, the Company should not have deducted income-tax on it. A
- (3) Direction to pay 12% interest from the date when the claim applications of the subscribers were decided by the Kerala High Court was wrongly treated as 21.2.1991, as, according to applicants, this date should be from 1981 or in any case from 1987; B
- (4) The Company was liable to refund the amount shown in the pass book yet they were refunding lessor amount after deducting not only the commission but also the dividend which had accrued on the deposit. C
- (5) The Company instead of paying every Member of the Subscribers' Association have paid to 186 Members only.

So far as the first claim is concerned, we are of the opinion that the Company was liable to pay interest at the rate of 25% even on the deposit of Rs. 5 Lakhs. It is not disputed that the interest at the rate of 25% has been paid on the deposit from 6.4.1990. We, therefore, direct that the Holding Company shall pay interest at the rate of 25% on Rs. 5 lakhs from 3.11.1989 to 5.4.1990 minus the interest which has been earned on this amount and becomes payable to Subscribers' Association. D E

As regards second claim, we clarify our Order dated 14th May, 1993 that the 25% interest directed to be paid by the Holding Company was towards compensation on the total deposits made by the Subscribers' Association in the course of adjusting equities between parties. From the document filed in this Court it appears that the Holding Company after deducting income-tax has deposited the same with the Income-tax Department. It shall be open to the subscribers to apply to the Income-tax Department for refund of the same on the basis of this Order. F

As regards the direction to pay interest at 12% in claim 3, it appears the claim of the Subscribers' Association for purchasing the land offered by the holding Company was accepted by the holding Company was accepted by the High Court on 6.10.1989. When we passed the Order our intention was that they shall be entitled to interest from the date when their claim applications were decided by the Kerala High Court. Consequently, G H

A we direct the Holding Company to pay interest on amounts payable to them on account of subscriptions made by them to Chit Fund from 6.10.1989 to 20.2.1991 in addition to the interest already paid by them thereon from 21.2.1991 to 23.7.1993.

B As regards claim (5), for the payment of money to the subscribers as shown in the pass books, it was urged on behalf of the Company that when the matter was pending in the High Court a scheme was prepared for payment with consent of parties and it was agreed that the refund shall be made of the actual subscribed amounts and not the dividend earned on such amounts. The Company was further permitted to deduct 5% commission on it. This is substantiated by copy of the Order dated 24th June, 1992 of the High Court produced by the learned counsel for the Company. This order was passed on an application filed by an ex-subscriber. It was observed :

D ".....Clause 1 of Annexure R1 shows that the subscribers are being paid by the company in liquidation " on the basis of actual subscriptions less Forman's commission". Therefore, payments are being made pursuant to the Scheme without reference to the dividend. It is reasonable to hold therefore that the company in liquidation is not, under the scheme , bound to pay dividend."

E Since the scheme was framed with agreement and large number of subscribers have been paid in accordance with it the claim of the subscribers is not justified. The payment of the actual amount after deducting 5% commission without any dividend does not call for any interference.

F So far as the Membership is concerned, it is not disputed that all subscribers who were shown as Members of the Subscribers' Association in the list filed by them in 1987 before the High Court have been paid. The claim of the applicant, therefore, for enlarging the Membership cannot be accepted.

G The application is disposed of accordingly.

R.P.

Application disposed of.