M/S. RISHYASHRINGA JEWELLERY LTD. AND ANR. A

v.

THE STOCK EXCHANGE, BOMBAY AND ORS.

OCTOBER 31, 1995

[J.S. VERMA AND K. VENKATASWAMI, JJ.] B

Companies Act, 1956 :

S.73(1A)—Company—Enlistment of shares—Applications for permission made to three stock exchanges—One stock exchange rejecting application—Held, if permission not granted by anyone of several stock exchanges named in prospectus, entire allotment is rendered void and grant of permission by one of them is inconsequential. C

Words and Phrases :

D

Word "each" occurring in S.73(1a) of Companies Act, 1956—Meaning—Explained.

The appellant-company issued on 31.5.1994 a prospectus offering to the public for subscription of certain equity shares intimating that applications had been made to the Stock Exchanges at Coimbatore, Bombay and Madras for permission to deal in and for an official quotation in respect of the equity shares of the company offered in terms of prospectus. The date of closing the subscription was 19.7.1994. The period prescribed under S.73(1A) of the Companies Act, 1956 for grant of permission by the Stock Exchange expired on 27.9.1994. Permission was granted by the Coimbatore Stock Exchange on 26.9.1994 and by the Madras Stock Exchange on 28.10.1994. But company's application was rejected by the Bombay Stock Exchange on 28.9.1994, as the Company did not complete the necessary formalities in this respect. Having failed before the High Court, the company filed the appeal by special leave. E F G

On the question: whether the entire allotment of shares was rendered void by virtue of S.73(1A) of the Act, because of the rejection of the application by the Bombay Stock Exchange to render ineffective even the grant of permission by the Coimbatore Stock Exchange within the specified period. H

A **Dismissing the appeal, this Court**

HELD : 1.1. Where the prospectus of a Company held out that enlistment of shares would be in more than one stock exchange, the consequence by virtue of sub-section (1A) of S.73 of the Companies Act, 1956 is to render the entire allotment void if the permission has not been granted by anyone
B **of the several stock exchanges named in the prospectus and the grant of permission by one of them is inconsequential. [586-G, H, 587-A]**

1.2. Sub-section (1A) of S.73 of the Act requires that if the prospectus states that application has been made to more than one recognised stock
C **exchanges then it shall state the name of *each* such stock exchange, i.e. *every* such stock exchange or in other words, *all* the stock exchanges to which the application has been made. The second part of the sub- section (1A) provides the consequences of refusal of the permission by saying that any allotment made on an application in pursuance of such prospectus shall be void" if the permission has not be engranted by the stock exchange or *each***
D **such stock exchange", as the case may been before the expiry of ten weeks from the date of the closing of the subscription list. This means that any allotment made shall be void if the permission has not been granted by the stock exchange where the application is made only to one stock exchange or each such stock exchange "where the application is made to more than**
E **one stock exchange". The expression "each such stock exchange' here must mean the same as in the earlier part of sub-section (1A) of S.73 i.e., each and every or in other words, all such stock exchanges. The clear object of insertion of sub-section (1A) in S.73 was to overcome the decision in *Allied International Products Ltd.** by amending the law in this Manner. [586-B-E]**

F ****Union of India* v. *Allied International Products Ltd. & Anr.*, [1970] 3 SCC 594, referred to .**

***Collins Dictionary of the English Language & Stroud's Judicial Dictionary of Words and Phrases*, referred to.**

G CIVIL APPELLATE JURISDICTION : Civil Appeal No. 9723 of 1995.

From the Judgment and Order dated 15.3.95 of the Bombay High Court in W.P. No. 514 of 1995.

H F.S. Nariman, Navroj Seerai, S. Merchant, Ramesh Singh and Ms.

Bina Gupta for the Appellants. A

Harish N. Salve, Pratap Venugopal, K. J. John, Mukul Mudgal, Sunil Dogra, S.S. Shroff, Ms. Monica Sharma P. Datar and V. Krishnamurthy, for the Respondents.

The Judgment of the Court was delivered by B

J.S. VERMA, J. Leave granted.

The short but ticklish question which arises for decision in the present case is the meaning of the word 'each' in the expression "if the permission has not been granted by the stock exchange or *each* such stock C exchange" used in sub-section (1A) of section 73 of the Companies Act, 1956. This is the real question for decision in the present appeal.

Section 73 of the Companies Act, 1956 in so far as it is material is as under : D

> "73. (1) Every company intending to offer shares or debentures to the public for subscription by the issue of a prospectus shall, before such issue, make an application to one or more recognised stock exchanges for permission for the shares or debentures intending to be so offered to be dealt with in the stock exchange or each E such stock exchange.
>
> (1A) Where a prospectus, whether issued generally or not, states that an application under sub-section (1) has been made for permission for the shares or debentures offered thereby to be dealt in one or more recognised stock exchanges, *such prospectus shall* F *state the name of the stock exchange or, as the case may be, each such stock exchange*, and any allotment made on an application in pursuance of such prospectus shall, whenever made, be void, *if the permission has not been granted by the stock exchange or each such stock exchange,* as the case may be, before the expiry of ten G weeks from the date of the closing of the subscription lists :
>
> Provided that where an appeal against the decision of any recognised stock exchange refusing permission for the shares or debentures to be dealt in on that stock exchange has been preferred under section 22 of the Securities Contracts (Regulation) Act, 1956 H

A (42 of 1956), such allotment shall not be void until the dismissal of the appeal."

(emphasis supplied)

B The material facts which give rise to the above question are only a few. On 31.5.1994 the appellant-company issued a prospectus offering to the public for subscription 27,40,000 equity shares of Rs. 10 each in terms of the prospectus, intimating that "applications have been made to the Stock Exchanges at Coimbatore, Bombay and Madras for permission to deal in and for an official quotation in respect of the Equity shares of the C Company now being offered in terms of this prospectus." The date of closing the subscription mentioned in the prospectus was 19.7.1994. The period of ten weeks from the date of closing of the subscription list prescribed in section 73(1A) for grant of permission by the Stock Exchange expired on 27.9.1994. The allotment of shares was finalised on 16.9.1994. D Permission was granted by the Coimbatore Stock Exchange on 26.9.1994 and the trading commenced therein on 7.10.1994. Permission was granted by the Madras Stock Exchange on 28.10.1994. However, inspite of reminders issued on 18.8.1994 and 12.9.1994 by the Bombay Stock Exchange to the company to complete the required formalities, the necessary E compliance was not made by the company which resulted in rejection of the company's application by the Bombay Stock Exchange on 28.9.1994. The city-wise break up of allotment of the shares shows that the number of shares allotted were 17,44,600 in Bombay, 3,45,400 in Coimbatore and 2,89,900 in Madras.

F In thi. context, the effect of rejection of the application by the Bombay Stock Exchange on the allotment of shares arises for consideration under sub-section (1A) of section 73. The question is : Whether the entire allotment of shares is rendered void by virtue of section 73(1A) because of the rejection of the application by the Bombay Stock exchange to render G ineffective even the grant of permission by the Coimbatore Stock Exchange within the special period?

In substance the contention of Shri F.S. Nariman is, that the consequence of rendering void the allotment made under section 73(1A) en- H visaged by the provision cannot render ineffective the permission granted

by the Coimbatore Stock Exchange within the prescribed period. The reply of Shri Harish Salve is that the consequence of rendering the entire allotment void is clearly envisaged where rejection of the application for permission is by any such stock exchange to which application has been made. Shri Salve referred to the legislative history which led to the insertion of sub-section (1A) to overcome the consequence of the decision of this Court in *Union of India* v. *Allied International Products Ltd. & Anr.*, [1970] 3 SCC 594, by the amendment of law in this manner. It is, therefore, necessary at this stage to refer to the decision of this Court *in Allied International Products's* case (supra).

In *Allied International Products'* case (supra) a similar question arose for decision prior to insertion of sub-section (1A) in section 73 when applications were made for permission to several stock exchanges but only one out of them granted the permission to enlist the company's share. That question arose in the context of section 73(1), as it then stood, which was as under :

> "(1) Where a prospectus, whether issued generally or not, states that application has been made or will be made for permission for the share or debentures offered thereby to be dealt in on a recognised stock exchange, any allotment made on "an application in pursuance of the prospectus shall, whenever made, be void, if the permission has not been applied for before the tenth day after the first issue of the prospectus, or, if the permission has not been granted before the expiry of four weeks from the date of the closing of the subscription lists or such longer period not exceeding seven weeks as may, within the said four weeks, be notified to the applicant for permission by or on behalf of the stock exchange."

It was held by this Court as follows :

> "..... If applications are made to several Exchanges, some within the period of ten days after the first issue of the prospectus, and some beyond, or that one or more applications, but not all, is or are defective, and the error is not rectified, it would be unreasonable to hold that because some of the applications made beyond the tenth day after the first issue of the prospectus, or are defective, are liable to be rejected, the applications properly made

A before some of the Exchanges are also ineffective and the allotment made may be invalid."

(at page 601)

This is precisely the effect of the argument of Shri Nariman even B after the change has been made by insertion of sub-section (1A) in section 73. It has, therefore, to be seen whether inspite of this change in the law subsequent to the decision of this Court in *Allied International Products's* case (supra) the position in law remains unaltered.

The Statement of Objects and Reasons for making the amendment C in the Companies Act clearly states as under :

"6. Under the present Bill some other practices prevalent in the corporate sector, in so far as they may prove injurious or undesirable, are also sought to be checked. The provisions contained D in the Bill designed for this purpose deal with the following :

(1) Failure to enlist shares with all the Stock Exchanges mentioned in a prospectus. In legislating on this point, it is proposed to make an incidental amendment to Securities Contracts (Regulation) Act, 1956.

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xxx xxx xxx xxx"

In the notes on clauses the portion relevant for this amendment is as under :

F "Clause 7. - Sub-clauses (i) and (iii) section 73 prescribes certain time limit for enlistment with the stock exchanges. It also contemplates that enlistment has to be done in all the stock exchanges mentioned in the prospectus and in case of failure to do so, the money received in respect of allotment of shares on the basis of the prospectus should be refunded within a specified time. In the G recent judgment in *Union of India* v. *Allied International Products Limited*, the Supreme Court has held that if the stock exchange had intimated that it would give further consideration to an application, the time limit contemplated by the section will not operate. *It has also held that if any one of the stock exchanges* H *mentioned in the prospectus approved the application for enlistment,*

it would mean sufficient compliance with the provisions of section 73 and the allotment made in pursuance of that prospectus would be valid.

It has been felt that the decision of the Supreme Court referred to above is likely to lead to complication inasmuch as the investing public as well as under writing institutions are likely to lose the protection hitherto enjoyed by them. Hence section 73 is being amended suitably."

(emphasis supplied)

It is, therefore, clear that the effect of the decision of this Court in *Allied International Products Ltd.* in this behalf was sought to be overcome by making a suitable amendment in section 73 since it was visualised that the said decision is likely to lead to complications inasmuch as the investing public as well as under-writing institutions were likely to lose the intended protection enjoyed by them. In other words the effect of the decision in *Allied International Products Ltd.* that even if any of the stock exchanges mentioned in the prospectus approved the application for enlistment it would mean sufficient compliance with the provisions of section 73 and the allotment made in pursuance of that prospectus would be valid was sought to be overcome by amending section 73 to provide that enlistment has to be done in all the stock exchanges mentioned in the prospectus and in the case of failure to do so the money received in respect of allotment of shares on the basis of the prospectus should be refunded within a specified time. Thus the consequence of rendering the entire allotment of shares void was required to ensue if the enlistment contemplated in all the stock exchanges mentioned in the prospectus does not materialise. There can be no doubt that the clear object of insertion of sub-section (1A) in section 73 was to overcome the decision in *Allied International Products Ltd.* by amending the law in this manner. The question is whether this object has been achieved by the language used in sub-section (1A) of section 73.

The meaning and true purport of the word '*each*' in the relevant expression in section 73(1A) is not be determined for this purpose. In Collins Dictionary of the English Language, the meaning of 'each' is given as "every (one) of two or more considered individually", and 'every' means "each one (of the class specified), without exception". In stroud's Judicial

A Dictionary of Words and Phrases the true meaning of 'every' is "each one of all".

The meaning of the word 'each' in the expression "*If the permission has not been granted by the stock exchange or each such stock exchange*" in
B sub-section (1A) of section 73 is now to be determined. Sub-section (1A) of section 73 requires that where a prospectus states that an application under sub-section (1) has been made for permission for the shares or debentures offered thereby to be dealt in one or more recognised stock exchanges, '*such prospectus shall state the name of the stock exchange or, as*
C *the case may be, each such stock exchange*'. In other words, if the application is made only to one stock exchange then the name of that stock exchange is to be mentioned and where the prospectus states that application has been made to more than one recognised stock exchanges then it shall state the name of *each* such stock exchange, i.e. *every* such stock exchange or in other words, *all* the stock exchanges to which the applica-
D tion has been made. The second part of sub-section (1A) of section 73 then provides the consequence of refusal of the permission by saying that any allotment made on an application in pursuance of such prospectus shall be void "if the permission has not been granted by the stock exchange or each such stock exchange", as the case may be, before the expiry of ten weeks
E from the date of the closing of the subscription list. This means that any allotment made shall be void if the permission has not been granted by the stock exchange where the application is made only to one stock exchange or each such stock exchange "where the application is made to more than one stock exchange". The expression "each such stock exchange" here must
F mean the same as in the earlier part of sub-section (1A) of section 73, i.e., each and every or in other words, all such stock exchanges. Thus, where the prospectus held out that enlistment of shares would be in more than one stock exchange the consequence envisaged in sub-section (1A) of section 73 ensues to render void the entire allotment of shares unless the
G permission is granted by each and everyone or all of the stock exchanges named in the prospectus for enlisting the shares. This is the plain meaning of sub- section (1A) of section 73. In short, unless permission is granted by each or everyone of all the stock exchanges named in the prospectus for listing of shares to which application is made by the company, the
H consequence is to render the entire allotment void. In other words, if the

permission has not been granted by any one of the several stock exchange named in the prospectus for listing of shares the consequences by virtue of sub-section (1A) of section 73 is to render the entire allotment void and the grant of permission by one of them is inconsequential. This construction also promotes the object of insertion of sub-section (1A) in section 73 by amendment of the law made to overcome the effect of the decision of this Court in *Allied International Products Ltd.*. The contention of Shri Nariman, learned counsel for the appellants is, therefore, untenable.

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Consequently, the appeal fails and is dismissed. No costs.

R.P. Appeal dismissed.