

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL**

**NEW DELHI**

**COMPANY APPEAL (AT) NO.214 OF 2018**

**In the matter of:**

Mr. B. Subha Reddy

Appellant

Vs

S.S. Organics Ltd & Ors

Respondents

Ms Purti Marwaha Gupta, Ms Areeca Sanjay Massey, Mr Himanshu Tanwar,  
Advocates for the appellant.

Ms Pooja M Saigal, Advocate for Respondent No.1 and 2.

With

**COMPANY APPEAL (AT) NO.344 OF 2018**

**In the matter of:**

Mr. B. Subha Reddy

Appellant

Vs

S.S. Organics Ltd & Ors

Respondents

Mr Rakesh Kumar, Ms Areeca Sanjay Massey, Mr Himanshu Tanwar,  
Advocates for the appellant.

Ms Pooja M Saigal, Advocate for Respondent No.1 and 2.

**J U D G E M E N T**

**(4<sup>th</sup> March, 2020)**

**Mr. Balvinder Singh, Member (Technical)**

1. The present set of 2 appeals has been preferred by Mr. B Subba Reddy, through Power of Attorney Holder Mr. K Pratap Reddy (hereinafter referred to as 'Appellant') against the two impugned orders dated 27.02.2018 passed by National Company Law Tribunal, Hyderabad in C.P. No. 42/2015 & C.P. No. 22/2005.

**Company Appeal (AT) No.214/2018**

Company Appeal (AT) No.214 and 344 of 2018

2. The Brief facts of the case are that in C.P. No. 42/2015(TP No.76/HDB/2016) the National Company Law Tribunal, Hyderabad has dismissed the company petition filed by the Appellant alleging oppression and mismanagement against the Respondent No. 1 and 2 and simultaneously, imposed a cost of Rs. 5 lakhs on the Appellant. The Appellant was one of the Promoters/Directors of the Respondent No. 1 Company. The Appellant being an NRI had brought in the Respondent No. 2 into the Respondent No. 1 Company who was his close relative to look after his interest in the company. The Respondent No. 1 Company was formed in the year 1990 with plans to manufacture important life-saving drugs like Terfanidin, Mebendazole, Atenlol, Norfloxacin and other Intermediate drugs for a total capacity of above M.T. per annum. The Respondent No. 1 company was promoted in the erstwhile State of Andhra Pradesh as a Private Limited with one Dr. Sadasiva Reddy and Dr. V. Sai Sudhakar as signatories to the Memorandum and Articles of Association. At this juncture, the Respondent No. 2 was not the original signatory to the Memorandum and Articles of Association. The company was later on converted into a Public Company on 1.02.1993.
3. It is stated by the Appellant that the Respondent No. 2 breached his trust and abused the position of power to usurp control on the company and resort to illegal enrichment at the cost of Appellant. The allotment of equity share worth Rs. 2.5 crores to the Respondent No. 2 on 28.03.2005 during the subsistence of AAIFR stay order dated 21.03.2005 is void ab initio and ought to be set aside outrightly.
4. It is submitted that the NCLT failed to appreciate various bonafied acts done by the Appellant in the interest of the Respondent No. 1 company. The Appellant infused substantial funds and worked hard for the betterment of Respondent No. 1 company when the company was in losses and in dire necessity of funds.

5. It is further submitted that the NCLT failed to consider acts of oppression and mismanagement done by Respondent No. 2, which were in fact committed to defraud and defeat the interest of the Appellant herein and Respondent No. 1 Company.
6. It is further submitted that the NCLT failed to consider and take note of the illegal allotment of 25 lakh shares amounting to Rs. 250 lakhs. (The illegal allotment of 20 lakh shares worth Rs. 200 lakhs in favour of Respondent No. 2 was challenged by the Appellant in CP No. 22/2005 which has been dismissed vide separate order and the Appellant reserves its right to challenge the said order).
7. It is argued that the allotment of 20 lakh shares made in pursuance of the scheme of 2002 is liable to be set aside in view of the fact that it violates the provision of section 18(3) of SICA which entails that the shareholders and the other people have to be duly made aware of the covenants of the draft scheme which were to be eventually sanctioned in terms of section 187(4) of SICA. The Respondent No. 2 was well aware that the Appellant is not a resident of India but an NRI and his brother in law and despite being aware of this particular nuance of the matter, there was no publication, which was made in any international newspaper based in America and also the Allotment of shares was made behind the back of the Appellant.
8. It is stated that the NCLT failed to take note of the fact that the entire amount was siphoned away illegally from the company and rotated back for allotment of equity in favour of Mr. V.N. Sunanda Reddy. The said illegalities including siphoning of company monies to the tune of more than Rs. 10 crores by the Respondent No. 2 have been recorded by the Auditors appointed by Company Law Board, Chennai in C.P. No. 22 of 2005 as per its report.

9. Further, the allotment was also challenged since the entire structure of equity was being disturbed by the Respondent No. 2 only with the ultimate intent of consolidating his equity structure to the detriment of the Appellant through his various oppressive acts. The allotment was also challenged in view of the fact that it was declared as a nullify in terms of the order of the AAIFR dated 31.03.2005 and the said order remained undisturbed.
10. It is submitted by the Appellant that the allotment of equity shares grossly violated the various statutory provisions/ procedures of Companies Act pertaining to approval of general Body through special resolutions under provision 81(1A) for the allotment and the increase in authorised capital, amending memorandum and articles of associations. Hence it is null and void.
11. It is also submitted that the Respondent No. 2 has been falsely contending himself as a promoter of the Respondent No. 1 Company when in fact the Respondent No. 2 was only representing before BIFR as professional Managing Director of Respondent No. 1 Company and he could by no stretch of imagination be considered as promoter with his holding and his financial position and humble beginning which were duly reflected in various Company records.
12. It is further submitted that there is no period of limitation prescribed under the Companies Act, 1956 and the relevant sections prescribing limitations under the Companies Act, 2013 were only notified on 1<sup>st</sup> June, 2016 after filing of the Company Petition.
13. It is further submitted that NCLT failed to appreciate that in the instant case the acts of Oppression and Mismanagement as enumerated by the Appellant in the Company Petition have not concluded or stopped or exhausted in a particular year rather are

continuing and persisting as on date. Accordingly, the company petition cannot be barred by limitation or suffer from delay/latches.

14. It is argued that the Appellant had made out a case of Oppression and Mismanagement which warranted appropriate orders to be passed under Section 242 of companies Act, 2013. Also, NCLT failed to appreciate the facts of the case in hands and erred in imposing a cost of Rs 5 lakhs on the Appellant while dismissing the Company petition.

15. Respondent filed their reply and rebutted in brief as under: -
- a) That, the present appeal in C.P. No. 42/2015 has been filed on 8.06.2018 purportedly on the basis of certified copy of the impugned Order, stated to be ready on 26.4.2018 and no explanation is offered as to the free copy of the order that is made available to each party and the present Appeal filed on 8.06.2018 is barred by limitation and is liable to be rejected as such.
  - b) That, there is no infirmity in the order passed by the NCLT, Hyderabad which has proceeded to reject the company petition no. 42/2015 primarily for the reason that the adjudication with respect to 2,50,000 equity shares has attained finality in prior proceedings and the appellant has suffered orders against him from the BIFR/AAIFR, High Court in Writ proceedings and also from CLB. Further, the Appellants petition has been found to suffer from delays and latches.
  - c) That, the issue with regards to allotment of 2,50,000 equity shares upon conversion of unsecured loans of promoters amounting to Rs 2.50 crores under the modified rehabilitation scheme has been agitated by appellants before various forums and has been rejected and thus attained finality and its challenged by way of company petition 42/2015 was barred by (i) Res judicata, issue estoppel and cause of action estoppel and also (ii) barred by delay/latches. The conversion has an overriding effect and cannot be subject matter of challenge before NCLT.

- d) That, appellant was never the original promoter and joined the company on 9.12.1993 and is not a signatory to the memorandum and articles of association of the company. The appellant was holding 9% of the shares as oppose to 26.9% as mentioned in para 7 of the appeal the financial participation of the shareholding was only to the extent of Rs. 50,00,000/- out of the total paid up capital amounting to Rs. 5,55,00,000/- which constitute only 9% of the total paid up capital. The appellant despite stay order of the High Court acquired further shares (from open market and not by infusion in company).
- e) That, respondent no.2 became the managing director of the company on 1.01.1997 and by the time the 2<sup>nd</sup> respondent took over as the managing director of the company, the entire net worth of the company stood eroded, hence the reference was made to BIFR and registered as case no. 91/97 as per statutory mandate of provisions of SICA. 2<sup>nd</sup> respondent file form A with BIFR as promoter and not as managing director as case no. 91/97.
- f) That, BIFR sanctioned fresh scheme under section 18(4) of SICA, which stipulated a further induction of unsecured loan of Rs. 250 lacs/- by the promoter and its conversion into equity shares by the company. Accordingly, the sum of Rs.50 lacs/- that was brought in as an unsecured loan by respondent no.2 were to be converted into equity shares of the company for Rs. 10 / share. This scheme also envisaged OTS to IDBI and SBI and even before the scheme. In terms of the sanctioned scheme, the 2<sup>nd</sup> respondent converted his unsecured loan of Rs. 250 lacs into equity shares as the amount had been brought in only by respondent no.2. the scheme provided exemption of compliance with SEBI Act and guidelines.
- g) That, the appellant assailed the order of BIFR sanctioning the scheme before the AAIFR by way of appeal no. 48/2005. The challenge was limited to affect that the scheme will have on

reducing appellant to minority and not on any illegality in such conversion. The AAIFR granted an ex-parte ad-interim stay on the conversion of shares. The order dated 21.03.2005 which was passed ex-parte by the AAIFR was not served upon the company of the respondent no.2 till 28.03.2005. Respondent no. 2 convened the board meeting on 28.03.2005 and proceeded to allot equity shares worth RS. 250 lacs as per sanctioned scheme of BIFR.

- h) That, vide final order dated 28.12.2005, the AAIFR dismissed the appeal no. 48/2005 filed by the appellant. At the specific request of appellant, AAIFR discharge appellant from requirement of submitting personal guarantee to banks and from pledging shares to bank by modifying the scheme.
- i) That, the appellant also approached the High Court of Hyderabad vide writ petition no.350/2006 assailing the order dated 28.12.2005 passed by AAIFR dismissing the appellant's appeal no.48/2005. The High Court dismissed the writ petition on 6.11.2007 stating that, it didn't find sufficient reasons for it to interfere under Article 226 and observed that, appellant could approach any appropriate forum to redress his grievances.
- j) That, the 13<sup>th</sup> AGM held on 20-10-2006, the AGM was hijacked by the appellant and he illegally and forcibly occupied the company during the conduct of the 13<sup>th</sup> AGM. The appellant thereafter convened a Board Meeting dated 22.10.2006 and illegally and unlawfully passed a resolution dated 22.10.2006 purporting to cancel the 26.5 lacs shares allotted to respondent no. 2(25 lacs upon conversion of unsecured loan of Rs. 250 lacs) and to IDBI (1.5 lacs no. of shares). Thus, the AAIFR (final order dated 28.12.2005), High Court (6.11.2007) and appellant all proceeded on basis that allotment of 25 lacs shares was existing and not declared null and void by AAIFR interim order dated 31.03.2005.

- k) That, Respondent no.2 approached CLB, Hyderabad by way of company petition 14/2007 assailing the appellant's illegal occupation of the company on 20.10.2006 and actions taken consequent to such illegal occupation. The CLB vide its order dated 14.08.2009 declared as the meeting held by the appellant on 22.10.2006 to cancel the allotment of shares to respondent no. 2 as "null and void" and further held that board constituted by respondent no.2 would carry on the business of the company.
- l) That, the order of the CLB dated 14.08.2009 was challenged by the appellant before the High Court in CA 22/2009 and CA 24/2009 which were dismissed by the Hon'ble High Court.
- m) That, the appellant has filed the CP No. 42/2015 with the prayer to cancel and annul the allotment of 25 lacs equity shares to respondent no.2 by declaring the allotment as null and void. After pursuing the pleadings filed by the appellant the Hon'ble NCLT dismissed the petition by imposing Rs. 5 Lacs as fine. The reasoning of dismissal is based on res-judicata and delay/laches.

16. In the appeal the appellant has mainly prayed for the following relief:

- i) Set aside the impugned order dated 27.2.2018 passed by NCLT in C.P. No.42/2015;
- ii) Waive the cost of Rs.5 lakh imposed on the appellant vide impugned order dated 27.2.2018;
- iii) Grant relief sought in Company Petition No.42/2015.
- iv) Status quo ante on the shareholding pattern of the Respondent No.1 company as prior to the allotment of 25 lakhs shares to Respondent No.2 in 2005.
- v) Stay the operation impugned order dated 27.2.2018 passed in CP No.42/2015.

17. From the above it is seen that the appellant is mainly seeking the relief of Status quo ante on the shareholding pattern of the Respondent



No.1 company as prior to the allotment of 25 lakhs shares to Respondent No.2 in 2005.

18. We have heard the parties and perused the record and find that BIFR vide its order dated 27.1.2005 (Page 398 of the appeal) approved Modified Sanctioned Scheme (MSS-2004) which provide that promoters agree to convert Rs.250 lakhs of unsecured loan into equity shares of Rs.10/- per share. The said order of BIFR dated 27.1.2005 was upheld by AAIFR vide order dated 28.12.2005 (Page 542 of appeal. The AAIFR order was challenged before the Hon'ble High Court of Andhra Pradesh at Hyderabad by filing writ petition No.350/2006. The Hon'ble High Court in its orders dated 6.11.2007 (Page 613 of appeal) dismissed the writ petition. The said order was not challenged in appeal. It is not in dispute that the unsecured loan was given to Respondent No.1 company by the 2<sup>nd</sup> Respondent. It is also not in dispute that the Respondent No.1 company was in financial stress and a reference was made and the company was referred to BIFR who approved rehabilitated scheme and directed that the unsecured loan to the tune of Rs.2,50,00,000/-granted by 2<sup>nd</sup> Respondent be converted into equity shares and accordingly these were converted into shares. We also note that during the arguments the appellant is agitating that the allotment of 25 lakh shares is illegal but have never come forward to argue that the appellant is ready to infuse the fund and the shares may be allotted to him. In the absence of any such offer and in the light of the Scheme approved by the BIFR directing the conversion of unsecured loan to equity shares what other alternatives could be operated in the circumstances. It is but natural that who has granted unsecured loan to the company, will be allotted shares as per the scheme approved by BIFR and upheld by AAIFR. The Hon'ble High Court has dismissed the appeal filed by the appellant challenging the orders of BIFR and AAIFR.

### **Conclusion**

19. In view of above discussions and observations we find that the impugned order a well reasoned order.

**Company Appeal (AT) No.344 of 2018**

20. The brief facts of the case are that the appellant filed Company petition No.22/2005 against the Respondent for oppression and mismanagement. Appellant infused huge amount in Respondent Company and brought Respondent No.2 to look after the interest of the company but Respondent No.2 beached his trust and abused the position of power to usurp control on the company and resort to illegal enrichment at the cost of appellant. Respondent got allotted 20 lakhs shares in his name to control the company. The appellant challenged allotment of 20 lakhs shares to Respondent No.2 and siphoning off huge monies which was dismissed by the NCLT solely on the basis of dismissal order passed in Company Petition No.42/2015.
21. Appellant submitted that the allotment which was made on 25.4.2003 pursuant to the sanctioning of the Scheme on 12.2.2002 by BIFR was challenged in the year 2005 within three years of the knowledge of the appellant.
22. Appellant stated that the allotment of shares is liable to be struck aside in view of the fact that it violates the provisions of Section 18(3) of SICA which entails that the shareholders and other people have to be duly made aware of the covenants of the draft Scheme which were to be eventually sanctioned in terms of Section 18(4) of SICA. Appellant submitted that he is an NRI settled in America and no publication was given in international newspaper based in America, therefore, the appellant was not aware of the same.
23. Appellant stated that the said scheme had eventually been declared as failed on 20.6.2003, therefore, the consolidation of equity under the garb of the provisions of SICA was highly uncalled for.
24. Appellant stated that the allotment of 20 lakhs shares was not the subject matter of any proceedings before any court of law. Appellant further stated that the dismissal of the matter on the premise that CP No.42/2015 has been decided against the appellant and accordingly the matter is being dismissed is highly uncalled for.

25. Appellant stated that 20 lakhs shares were allotted on 25<sup>th</sup> April, 2003 and filing was done by filing Form No.2 with the ROC on 5<sup>th</sup> November, 2003. Appellant submitted that deliberately ante dated allotment was shown by the Respondents. Appellant submitted that all this was done by Respondents to increase his control over the affairs of 1<sup>st</sup> Respondent and to reduce the holding of the appellant to a very low level. Appellant stated that the shares were allotted to minor children of 2<sup>nd</sup> respondent and Coral Drugs Ltd a company in which 2<sup>nd</sup> respondent has more than 99% shares. Appellant further stated that one of allottees (19<sup>th</sup> Respondent) is none other than wife of the statutory auditor of 1<sup>st</sup> Respondent. Appellant further submitted that there 290 unsecured loanees whereas the allotment has been made to only 37 loanees.
26. Respondent No.1 and 2 filed its reply and stated that Appellant was never the original promoter and joined the company on 9.12.1993 as an NRI director and is not a signatory to the Memorandum or Articles of Association.
27. Respondent No.1 and 2 further stated that 2<sup>nd</sup> respondent because the Managing Director of the company on 1.1.1997 and on that date the entire net worth of the company stood eroded. Therefore, a reference was made to BIFR who sanctioned Scheme of 2002 (SS02). The Scheme stipulated allotment of 20 lakhs shares as against the unsecured loan to be brought in by 2<sup>nd</sup> Respondent.
28. Respondent No.1 and 2 further stated that the appellant attended only 5 Board Meetings out of 18 Meetings held during the period 1994 to 1997 and appellant attended only one Board Meeting out of 35 Meetings held during the period of rehabilitation from 1998 to 2004.
29. Respondent No.1 and 2 further stated that appellant attend the Meeting on 26.2.2002 and at the meeting went on record to appreciate the efforts put in by 2<sup>nd</sup> Respondent in obtaining approval of obtaining the rehabilitation package (Annexure R-7, Page 190 of respondents' reply)

and was thus fully aware of the conversion of Rs.200 lakhs unsecured loan in to equity.

30. It is stated that 2<sup>nd</sup> Respondent held Board Meeting on 27.1.2003 for the allotment of 20 lakhs shares as envisage in the Scheme. EOGM was held on 27.2.2003 for approving the allotment of shares. The provisions of Companies Act 1956 has been duly complied with in allotment of shares even though the provisions of Section 18(4) SICA 1985 provides an overriding effect in so far as compliances required under law are concerned. IT is stated that the sanctioned scheme also exempted the company from compliance under Companies Act, 1956. It is stated that in terms of resolution passed at the EGM, 20 lakhs shares were allotted by 1<sup>st</sup> Respondent to 2<sup>nd</sup> Respondent and its associates. It is stated that 5 lakhs share were offered to appellant but the same were declined by him (Annexure R-4 Page 123-134 para 6(III) at Page 127). It is stated that refusal to accept share offered has also been recorded by the Hon'ble High Court of Hyderabad in its order dated 6.11.2007 in Writ Petition No.350/2006. The appellant did not challenge the order of Hon'ble High Court and thus the order of the AAIFR attained finality.
31. It is stated that the appellant has challenged unsecured loan of Rs.200 lakhs and Rs.250 lakh which was brought in by 2<sup>nd</sup> Respondent were converted into equity under BIFT Scheme has been agitated by the appellants before various forums and has been rejected and attained finality and its challenge by way of CP 42/2015 was barred by res judicata, issue estoppel and cause of action estoppel and also barred by delay/latches. The conversion has taken place in accordance with sanctioned scheme under SICA which has an overriding effect and cannot be subject matter of challenge before NCLT.
32. In the appeal the appellant has sought the following reliefs:
- i) Set aside the impugned order dated 27.2.2018 passed in CP No.22/2005.

- ii) Status quo ante on the shareholding patter of the Respondent No.1 company as prior to the allotment of 20 lakhs shares of Respondent No.2 on 25.4.2003/
  - iii) Stay of operation of the impugned order dated 27.2.2018 passed in CP No.22/2005.
  - iv) Status quo on the present shareholding patter of the Respondent No.1 company, immovable assets and properties of Respondent No.1 company.
  - v) Reliefs as sought in CP No.2005
33. We have heard the parties and perused the record and find that BIFR sanctioned Scheme (SS02) under Section 18(1), 18(2), 18(3) read with 18(4) of SICA. The Scheme SS02 stipulated allotment of 20 lakhs shares as against the unsecured loan to be brought in by the promoter, 2<sup>nd</sup> Respondent. Board Meeting was held on 27.1.2003 for allotment of 20 lakhs shares as per BIFR Scheme. EOGM was held on 27.02.2003 for approving the allotment of shares. 5 lakhs shares were offered to appellant who declined the offer (Page 87 of Reply, para 6(iii)). The Hon'ble High Court of Andhra Pradesh at Hyderabad has also in its order dated 6.11.2007 while deciding writ petition No.350/2006 filed by the appellant challenging the AAIFR order has observed (para 25 page 117 of reply) that the **“Board of Directors offered the shares to the extent upto Rs.50 lacs to the Petition and his associates. However, the Petitioner did not accept the offer due to reason that the share value of the company as on the date of allotment was around Rs.5.50 per share whereas the shares were issued at Rs.10/-. As the offer of allotment was not accepted by the Petitioner the Board of Directors of the company proceeded to allot the shares to his alternate director/relatives/associates to comply with the Scheme.”** The Hon'ble High Court in its orders dated 6.11.2007 (Page 613 of appeal) dismissed the writ petition. The said order was not challenged in appeal. It is not in dispute that the unsecured loan was given to Respondent No.1 company by the 2<sup>nd</sup> Respondent. It is also not in dispute that the Respondent No.1

company was in financial stress and a reference was made and the company was referred to BIFR who sanctioned the Scheme and directed that the unsecured loan to the tune of Rs.2,00,00,000/- granted by 2<sup>nd</sup> Respondent be converted into equity shares and accordingly these were converted into shares. We also note that during the arguments the appellant is agitating that the allotment of 20 lakh shares is illegal but have never come forward to argue that the appellant is ready to infuse the fund and the shares may be allotted to him. On the other hand when he was offered shares he refused the offer. It is but natural that who has granted unsecured loan to the company, will be allotted shares as per the scheme sanctioned by BIFR. The Hon'ble High Court has dismissed the appeal filed by the appellant challenging the orders of BIFR and AAIFR in another matter.

34. Learned counsel for the appellant has argued that this Tribunal may grant reliefs as sought in CP No.22/2005. We have gone through the impugned order and we note that the prayers made by the appellant in the CP No.22/2005 has been duly considered and dealt with by the NCLT, Hyderabad and requires no interference of this Tribunal.

35. In view of the above discussions and observations we find no merit to interfere in the impugned orders. Both the appeals are dismissed and impugned orders are upheld.

**(Justice Jarat Kumar Jain)**  
**Member (Judicial)**

**(Mr Balvinder Singh)**  
**Member (Technical)**

**(Dr. Ashok Kumar Mishra)**  
**Member (Technical)**

**Bm**