

(1957) 03 CAL CK 0021
In the Calcutta High Court
Case No : Matter No. 283 of 1956

In Re: Calcutta Stock Exchange Association Ltd.

Date of Decision : 01-03-1957

Acts Referred:

Companies Act, 1913 — Section 104(4)
Companies Act, 1956 — Section 69, 75, 75(1), 75(5)

Citation : AIR 1957 Cal 438 : (1957) 1 CALLT 118 : (1957) 27 CompCas 559 :
61 CWN 448 : (1958) 2 ILR (Cal) 349

Hon'ble Judges : P.B. Mukharji, J

Bench : Single Bench

Advocate : R. Chowdhury, for the Appellant; H.N. Sanyal and A.K. Sen, for the Respondent

Final Decision : Dismissed

Judgement

P.B. Mukharji, J.—This is an application by a registered partnership firm called Srigopal Jalan & Co. for an order upon the Calcutta Stock Exchange Association Limited to file a return of allotment in the prescribed form giving all necessary particulars with the Registrar, Companies in respect of 70 forfeited shares re-issued and allotted by the Stock Exchange. The summons was taken out on the 29th June 1956 when the new Companies Act, 1956, had come into operation.

2. The application is based on Section 75 of the Companies Act, 1956 and is made u/s 614 of that Act. It raises an important question of principle which involves construction and interpretation of Section 75 of the Companies Act. Before proceeding to discuss law I shall briefly state the facts which are short and simple:

3. The applicant claims to be a member and shareholder of the Calcutta Stock Exchange Association Limited; Its case is that the company has from time to time forfeited 70 shares of Rs. 1,000/- each extinguishing the liability in respect of share capital paid up therein and that out of the said forfeited shares 65 had been originally issued for consideration other than cash and 5 for cash consideration. It also asserts that the said forfeited shares were reissued by the

company as fully paid up shares for cash consideration of Rs. 1,000 each. It refers to the last balance-sheet of the 30th September 1955 in support of its contentions.

4. The main point of the applicant's case is that the said 70 shares forfeited by the company were not forfeited for non-payment of calls and therefore both u/s 104 of the old Indian Companies Act, 1913 as well as u/s 75 of the Companies Act, 1956 it is obligatory upon the Calcutta Stock Exchange Association Limited to file a return of allotment of the said shares with the Registrar of Joint Stock Companies. That is the only point for decision in this application and is the only point argued on behalf of the applicant.

5. Section 75 of the Companies Act, 1956 provides:

(1) Whenever a company having a share capital makes any allotment of its shares, the company shall, within one month thereafter;

(a) file with the Registrar a return of the allotments stating the number and nominal amount of the shares comprised in the allotment, the names, addresses and occupation of the allottees, and the amount, if any, paid or due and payable on each share;

(b) in the case of shares (not being bonus shares) allotted as fully or partly paid up otherwise than in cash, produce for the inspection and examination of the Registrar a contract in writing constituting the title of the allottee to the allotment together with any contract of sale or a contract for services or other consideration in respect of which that allotment was made, such contracts being duly stamped, and filed with the Registrar copies verified in the prescribed manner of all such contracts and a return stating the number and nominal amount of shares so allotted; and

(c) in the case of bonus shares, file with the Registrar a return stating the number and nominal amount of the bonus shares so allotted."

6. Then the section proceeds to make other provisions including the provision for default in the filing of such return and making such default punishable with fine which may extend to Rs. 500/- for every day during which the default continues, provided that in case of default the company or any officer who is in default may apply to the Court for relief and the Court, if satisfied that the omission to file the document was accidental or due to inadvertence or that on other grounds it is just and equitable to grant relief, may make an order extending the time for the filing of the document for such period as the Court may think proper.

7. Ultimately Sub-section (5) of Section 75 of the Companies Act, 1956, makes the following provision on which the present applicant relies:

"(5) Nothing in this section shall apply to the issue and allotment by a company of shares which under the provisions of its articles were forfeited for non-payment of calls.""

8. It is the argument of the applicant that the only exception provided in Section 75(5) of the Companies Act is the case where shares are forfeited for non-payment of calls. In such a case it is contended that no return of the allotments need be filed as provided in Section 75 of the Act. But it is argued that in all other cases where the forfeiture of shares takes place not on the ground of non-payment of calls but on other grounds the return of allotments of shares issued in the place of the forfeited shares must be filed u/s 75 of the Act. The argument on behalf of the applicant is based on the principle "*expressio Untus est exclusio altcrius*". It is argued that because Section 75(5) of the Companies Act, 1956, includes only the case of forfeiture of shares for non-payment of calls, it should, therefore, on the basis of the above principle be held that Parliament must have impliedly legislated that in other cases of forfeiture of shares on ground other than nonpayment of calls a return of the allotments in respect of such forfeitures must be made under 8. 75 of the Act.

9. The present application, therefore, is made u/s 614 of the Companies Act, 1956, which provides that any member or creditor of a company or the Registrar can make an application to this Court compelling the company to make good such default. The applicant in this case still claims to be a member although its membership hangs by a very uncertain thread which might snap by the decision of two pending suits the result of which might be that under Article 22 it had ceased to be a member. Article 22 of the Articles of Association of the Calcutta Stock Exchange Limited provides that any member who is declared a defaulter by reason of his failure to fulfil any engagement between himself and any other member or members and who fails to fulfil such engagement within six months of the date upon which he is so declared a defaulter shall at the expiration of such period of six calendar months automatically cease to be a member. By the operation of this rule the applicant would have become a defaulter and ceased to be a member because of the applicant's failure to pay the sum of Rs. 6,700/- found due and payable by the applicant to one Durgadutt Jalan under the direction of the Full Committee of the respondent Association and also for the applicant's failure to pay to Singhanian Brothers two several sums of Rs. 21,875/- and Rs. 5,150/- also under the directions of the Pull Committee of the respondent Association. But before any steps could be taken by the Stock Exchange Association against the applicant for non-payment of the said sums to Durgadutt Jalan and Singhanian Brothers the applicant filed two suite in this Court being Suit No. 1866 of 1948 (Srigopai Jalan & Co, v. Calcutta Stock Exchange Limited) and Suit No. 1171 of 1948 (Srigopal Jalan & Co. v. Singhanian Brothers) and on July 8, 1948 obtained from this Court an injunction directing the respondent Association not to take any steps until the disposal of those two suits. While granting the injunction the Court also restrained the applicant from doing any business as a member of the respondent Association until the disposal of the said two suits.

10. Article 24 of the Articles of Association of the respondent company expressly provides:

"Upon any member ceasing to be a member under the provisions of Article 22 hereof and upon any resolution being passed by the Committee expelling any member under the provisions of Article 21 hereof or upon any member being adjudicated insolvent the share held by such a member shall ipso facto be forfeited,"

11. The actual forfeiture of the applicant's share under Article 24 has been prevented by the interim injunction granted in the two suits mentioned above and therefore the applicant's share still remains unforfeited. The applicant, therefore, has a right to move this application as a member u/s 614 of the Companies Act. I must state here, however, that the application which the applicant has made is not in respect of his share but with respect to 70 other forfeited shares on similar grounds and which were not for non-payment of calls.

12. There is no decision in India directly on this particular point. It is, therefore, a case of first impression.

13. The judicial maxim of interpretation that (sic) exclude one by name is to include all that is (sic) covered by that name has got many limitations. A specific exception may be construed as an implied inclusion of all that is not covered by the specific exception. But it is a rule of construction. This rule has many exceptions. Lord Campbell enjoined great caution in *Saunders v. Evans*, (1853) 8 HLC 721 at P. 729 (A) in the application of this principle and said that it was not of universal application. In the application of this principle to statute the learned editor of the 11th edition of Broom's Legal Maxims at page 452 utters the same caution and observes:

"The sages of the law, according to Plowden, have ever been guided in the construction of Statutes by the intention of the Legislature, which they have always taken according to the necessity of the matter and according to that which is consonant to reason and sound discretion."

14. Harries C. J. in *Calcutta Stock Exchange Association Ltd. v. S.M. Nundy*, ILR (1950) 1 Cal 235 at p. 265 (B) said that it was somewhat difficult to understand what could be the reason why shares forfeited for non-payment of calls should be excluded from the return of allotments. I shall venture an explanation. The explanation is that the forfeiture for non-payment of calls was the only kind of forfeiture which is described in the Companies Act and in the model table for Articles of Association known as Table "A". I am, therefore, of the opinion that by excluding forfeiture of shares for non-payment of calls, Parliament intended to exclude all kinds of forfeiture. While that decision holds that by a proper adjustment and framing of the model rules suitable Articles of Association could be formed allowing for forfeiture of shares on grounds other than non-payment of calls, that does not mean that the statute should also refer to such other types of forfeiture when neither the statute nor the Table "A" was considering those forfeitures. I do not think that any construction should be put on a statute or a statutory provision which imputes illogicality to Parliament. If a return was

required u/s 75 of the Companies Act in every case of allotment of share, then it would be illogical to provide that where such allotment was made after forfeiture of shares, and re-issue of them, then such allotment should be excluded. In that event, there would be no reason for such an exception but mere whim. It will be a self-contradictory construction upon Section 75 of the Act. The doctrine, therefore, that an express exclusion of one means an implied inclusion of the rest loses all its force where a statutory provision such as Section 75(5) of the Companies Act can be read not as selecting one particular type for exclusion from the return but as excluding the only kind of forfeiture with which the statute was expressly dealing with. It therefore means exclusion of all kinds of forfeiture from the operation of Section 75 of the Companies Act. The fact that other kinds of forfeiture are permissible by suitable Articles of Association specially framed to have that effect is after all the result of a construction and inference drawn by the Courts from the statutes and is not the subject of express legislation. The doctrine therefore of "*Expressio Unius est Exclusio Alterius*" cannot, in my opinion be applied to this case.

15. I have come to the conclusion that the return of allotment mentioned in Section 75 of the Companies Act of 1956 does not cover the case of forfeiture where shares are re-issued after forfeiture and this is so in all cases of forfeiture be they for non-payment of calls or on other grounds.

The provision contained in Section 75(5) of the Companies Act is a provision *Ex Abundanti Cautelae*. No such provision as Section 75(5) of the Companies Act, 1956, occurs in the corresponding Section 53 of the English Companies Act, 1948. The English practice without such a provision such as Section 75(5) of our Companies Act does not indicate that where shares are re-issued after forfeiture they are included in the return of allotment u/s 52 of the English Companies Act. Company law in India has towed the line of English law on this point. In fact, there was no such provision as the present Section 75(5) of the Companies Act 1956 on the Indian Statute book until the year 1936. No previous Indian Companies Act including the famous one of 1913 contained any such provision. Such provision was for the first time introduced by Section 57 of the Amending Act of 1936 with the object of excluding forfeited share subsequently reissued from the purview of allotment. It then appeared as the added Sub-section (4) of Section 104 of the Indian Companies Act, 1913. I shall now try to give in brief the reason why it was not found necessary either in the older Indian Acts or in the present English Acts and why the present provision as contained in Sub-section (5) of Section 75 of the Companies Act, 1956, is only a measure of abundant caution and no more.

18. The reason is this Section 75 of the Companies Act, 1956, comes within Part III of the Companies Act, 1956, dealing with "Prospectus and allotment and other matters relating to issue of shares and debentures" and occurs in the sub-heading of "Allotment" covering the group of sections from Sections 69 to 75. Section 69 of the Companies Act appearing in that context and dealing with

prohibition of allotment unless minimum subscription has been received opens with the Words "no allotment shall be made of any share capital of a company offered to the public for subscription." In other words, the allotment meant is the first allotment or the original allotment which is made of the share capital of a company and offered to the public for subscription. It is clear that the statute makes a marked difference between the first or the original allotment and the subsequent allotments. That will be clear from Sub-section 7 of Section 69 of the Companies Act, 1956, which specifically excludes practically the whole of the operation of that section except the provision stipulating the minimum 5 per cent. of the nominal amount of share on application for each share, to any allotment of share subsequent to the first allotment of shares offered to the public for subscription. Placed in that context the words off Section 75(1) of the Companies Act, 1956--

"Whenever a company having a share capital makes any allotment of its shares," should, in my opinion, be confined to the original or the first allotment or allotment of new shares made of the share capital offered to the public for subscription and should not be extended to include the case of subsequent re-issue of shares in lieu of forfeited shares although such re-issue may loosely be called allotment.

17. I shall also support this interpretation of the words "makes any allotment of its shares" in Section 75(i) of the Companies Act, 1956, by construing the word "allotment". Allotment as such has not been defined in the Companies Act. In the jurisprudence of company law as I understand it, allotment of shares has a special technical meaning, It means, in my opinion, division of the entire share capital into definite shares, each of particular value and also of different classes and an assignment of such shares singly or numerously to different persons. The central core of the word "allotment" is the notion of a "lot". The true meaning of the word "allot" must, therefore, be first the creation of lots of shares and then the division of them into value and classes and lastly, allocation of them individually or numerously to particular applicant or applicants. The word "allotment", from this point of view, is inappropriate to describe the act of forfeiture of one or more existing individual shares and re-issue of such share or shares to other persons. That, to my mind, is not a case of allotment at all but a case of re-issue of individual shares already within the structure of share capital as provided in the Articles of Association.

18. In fact, an analysis of the different provisions of the Companies Act places allotment of shares on a different category altogether and shows the true meaning of allotment in Company law. Section 41 of the Companies Act, 1956, shows that subscribers of the memorandum of a company shall be deemed to have agreed to become members of the company and on its registration shall be entered as members in its register of members. In their case such subscribers become shareholders without either the mode of transfer or by the mode of allotment. What, in fact, the law does in their case is that their subscription to

the Memorandum takes the place of an application for shares and the registration of the Memorandum operates as the acceptance of that application by the Company. The second mode of creating shareholder is by way of transfer of shares from one person to another as provided in Section 108 of the Companies Act, 1956. This is also different from allotment. The third mode of creating shareholders is by allotment Of share offered to the public for subscription as recognised in Section 69 of the Companies Act, 1956. In that context of the different modes of creation of new shareholders, it appears that allotment is and should be confined to the case of new shares created out of the share capital and offered to the public for subscription. That means, first the creation of a "lot" of new shares. It indicates that allotment is an incident of a bulk transaction. Thereafter, the lots of shares are grouped and divided into lotments of classes and series. What is done, a certain number of shares out of those different lotments are appropriated and "allotted" to individual shareholder or shareholders. The portion of a shareholder may be a single share or more than one share, but it is always the result of the creation of a "lot" and the division thereof. I shall, therefore, construe the words "makes an allotment of its shares" in Section 75(1) of the Companies Act by limiting them to the case of creation of new shares and issue of new shares out of the share capital of the company and offered to the public for subscription, and not extending them to include the case of a share re-issued after forfeiture but within the limit of the existing issued share capital.

19. This interpretation is supported by the following observations of the Court of Appeal in ILR (1950) 1 Cal 235 at pages 270-71 (B).

"when a share is forfeited what happens is that the right of the particular shareholder to hold the share and his interest in it are taken away and not that the share itself as a unit of the share capital or an interest representing the money paid upon it is extinguished. If it is extinguished at all, it is extinguished only in the character of being a share held by a particular shareholder, i.e., his interest in the company measured by a sum of money and made up of various rights and liabilities as explained by Far-well J. in *Borland's Trustee v. Steel Brothers & Co. Ltd.*, (1901) 1 Ch 279 (C). But the share itself as a result of the share capital and as an issuable part thereof remains."

20. In *Nicol's case*, (1885) 29 Ch D 421 at p. 426 (D) the observations of Chitty L.J, are quoted with approval in *Palmer's Company Precedents*, Part I, 15th Edition at page 42 where the learned Lord Justice said:

"To my mind there is no magic whatever in the term "allotment" as used in these circumstances. It is said that the allotment is an appropriation of a specific number of shares. It is an appropriation, not of specific shares, but of a certain number of shares."

21. I think the learned Lord Justice Was striking the fundamental note in the idea of allotment when his Lordship discountenanced the theory that allotment was an

appropriation of a specific number of shares. His Lordship said that it was not so but was an appropriation of a certain number of shares. The case of a share forfeited and thereafter re-issued will be a case of a specific share and not appropriation of a certain number of shares. It is an idea which can agree only with the view where the company is making its first or original allotment of shares but of the share capital offered to the public for subscription or even thereafter where new classes of shares are created for the first time and offered to the public for subscription.

22. I shall, therefore interpret the word "allotment" in Section 75(1) of the Companies Act, 1956, to mean only the original or the first allotment or even subsequent allotments provided they are allotments of new shares and not re-issue of shares in lieu of pre-existing shares which for some reason or other had been forfeited.

23. This interpretation is strengthened still further by a consideration of the real object of calling for a Return of allotments u/s 75 of the Companies Act, 1956. Its only object is to disclose the position of the company as regards its issued shares. That is how Palmer put it in Part I of Palmer's Company Precedents, 15th Edition, p. 56 while commenting on the similar provisions contained in Section 42 of the older English Companies Act, 1929. But the idea becomes clearer still when the contents of such Returns of allotments u/s 75(1) of the Companies Act are scrutinized. What does this Return of allotments require to state? The Return is to state (1) the number, (2) the nominal amount of the shares comprised in the allotment, (3) the names, addresses and occupation of the allottees and (4) the amount, if any, paid or due and payable on each share. A glance at these details shows in my opinion that they are more relevant and germane to allotment in the sense I have interpreted than to a case of forfeiture. These details in the Return u/s 75(1) of the Companies Act are obviously intended to inform the Registrar or those who wish to search the Registrar's office about the structure of the share capital of the company and how it is divided among what allottees and for what consideration. That is why Palmer describes the object of these Returns to show the position of the company with regard to its issued shares. But in the case of shares already issued but subsequently forfeited and thereafter re-issued in place thereof, the structure of the company's share capital is not altered at all, and it is enough that the Annual Return shows the total number of shares of each class forfeited and the total amount paid, if any, on shares forfeited.

24. Re-issue of shares in lieu of forfeited shares does not alter the quality or the structure of the issue of share capital of the company. All that it means is that the original holder whose share is forfeited is no longer the holder of the share that is re-issued in lieu of the forfeited share. To show the change of the personality of the shareholder is not in my view the object of the Return u/s 75(1) of the Companies Act because the object as I have said, adopting Palmer's view, is to show the structure of share capital of the company in respect of its

issued shares. The utility and occasion of filing Returns of forfeited shares u/s 75(1) of the Companies Act are considerably whittled down by the Annual Returns that the company has to file in respect of the share capital u/s 159 of the Companies Act, 1956. That section provides inter alia that every company having a share capital shall prepare and file with the Registrar a Return containing the particulars specified in Part I of Schedule V regarding among other things a register of members as well as a list of members past or present. _ The Form is provided in Part I of the Schedule V of Companies Act, 1956. Clause 5 of that Form contains provisions for an elaborate list of names, addresses, description and occupation of the members of the company as well as the persons who have ceased to be members. It is also to show under Clause 3(1) the total number of shares forfeited. Part II of the same Form of Annual Return provides specific items such as "total number of shares of each class forfeited" and "total amount paid, if any, on shares forfeited". It is true that this Annual Return while indicating all the names and numbers of shareholders would not identify who is the new shareholder to whom the forfeited share was re-issued. But that is not either the object or the purpose in my view as I have said for furnishing Returns of allotment u/s 75(1) of the Companies Act. Unless, therefore, a statute expressly or by most compelling and necessary implication requires in such case of forfeiture that a Return should be made indicating to whom the share re-issued in lieu of the forfeited share has been allotted. I am not prepared by a process of Inference to create a further burden of Returns to be furnished by the company. The Annual Return in this case has been duly filed.

25. It remains for me now to add that the Form at present prescribed u/s 75(1) of the Companies Act, 1956 does not even remotely indicate that the re-issue of a share in lieu of the forfeited share is at all the subject-matter of such a Return. The new Form prescribed for Return of allotments u/s 75(1) of the Companies Act, 1956 is one more argument why the Return of allotments of shares contemplated therein does not call for Return of the re-issue of shares in place of forfeited shares even though such forfeiture was not made for non-payment of calls. I am conscious that forms prescribed cannot affect the question of construction, but when forms prescribed support the construction then there is no scope left for doubt on the point of construction.

26. This interpretation is again fortified by the Articles of Association of the respondent company in the present case. The most relevant Article on this point is Article 27 which provides:

"Any shares so forfeited shall be deemed to be the property of the Association and the Committee shall sell, reallocate and otherwise dispose of the same in such manner as to the best advantage for the satisfaction of all debts which may then be due and owing either to the Association or any of its members arising out of transactions or dealings in stocks and shares."

27. It is not without significance that this Article does not use the word "allot" but uses the word "re-allot" and I am therefore satisfied that Section 75(1) of

the Companies Act 1956 applying to allotments cannot in any event apply to "re-allotment" in this context of the Article. These provisions make it clear that the company cannot swallow the share forfeited and retain it. These provisions indicate that the company must part with the forfeited share. Therefore it is not really a case of allotment at all but essentially and substantially a case of compulsory or forced transfer of a share from one shareholder to another person. The share capital is not touched nor its structure or division altered. It is true that when such a compulsory transfer is made the original shareholder's rights are forfeited and the expression "forfeiture" is used. But nevertheless the particular type of forfeiture which is the subject-matter of this application and which is not for non-payment of calls is not usual in an ordinary trading company but is really a method and process of enforcing obligations imposed on members of an association like the Stock Exchange. Similar views on these articles were expressed by Harries C. J. in ILR (1950) I Cal 235 at pages 259-60 and at p. 262 (B). I am, therefore, of the opinion that such an occasion, although nominally called forfeiture under the Articles of this Association is not the type of forfeiture in any event which can be said to at all come within the contemplation of Section 75(5) of the Companies Act, 1956.

28. I do not think it is necessary to say more on the question of construction.

29. I need now refer only to another branch of the argument advanced not so much on the point of construction but addressed mainly on the effect which such construction will have. The whole object of the applicant is to know what consideration was paid by the new shareholder and who purchased or obtained each share issued in lieu, of the forfeited shares. It was argued that although the normal price of these shares was Rs. 1,000/- each, they have been sold at fabulous prices. I do not think this argument can at all affect the question of construction or interpretation even assuming all what the applicant says is true. But even then I shall deal with this argument on its merits. A share of a joint stock company can enormously appreciate in value and may be very much more than its normal price or face value. No law prevents as yet such appreciation nor do I know of any law which puts any maximum limit to such appreciation. This is not a case where any ceiling price for shares of the Calcutta Stock Exchange has been laid down by any statute or ordinance or law. In this case what happens is that the share is sold to meet the debts and obligations which have been imposed upon a member whose share is about to be forfeited. The membership of the Calcutta Stock Exchange Association is a valuable status which entitles a member to do business involving large sums of money and in so doing a member may have to incur huge liabilities. It is therefore quite in the fitness of things that the share should be sold at the market value and if the share is highly appreciated it is better to sell it at such price for by so selling it would be possible to liquidate the large liabilities of the particular member whose share is being forfeited out of the sale proceeds of such share. Then it was argued that the balance, if any, is being appropriated by the respondent company without being given back to the person whose share was sold. Formerly, I am told that

the practice was uncertain and the surplus left out of the sale proceeds after meeting the obligations was paid back to the person whose share was forfeited. But then by a decision of this Court that practice was stopped. That decision is *Syam Chand v Calcutta Stock Exchange Association Ltd.*, ILR (1949) 2 Cal 313: (AIR 1949 Cal 337) (E) where the learned Judge in deciding the case observed at p. 331 (of ILR Cal): (at p. 345 of AIR):

"Payment over of the surplus sale proceeds of a forfeited share to the expelled member does not admittedly come within Clause 3(n) of the Memorandum or Clause 19 (17) of the Articles. Therefore, on a construction of the provisions of the Memorandum and the Articles in accordance with the general principle of interpretation and in the light of the judicial decision mentioned above I have come to the conclusion and I hold that the alleged practice of paying the surplus sale proceeds to the expelled member pleaded in paragraph 16 of the plaint is ultra vires the respondent Association and invalid."

30. Since that decision the surplus of the balance of the sale proceeds in such cases is always added to the Capital Reserve in the Balance Sheet of the respondent Association. I need only add that the Balance Sheet shows the value of the forfeited shares at their face value. The 1955 Balance Sheet includes this under the heading "Sub-scribed and Paid up Capital less values indicated against forfeited shares" and then the value is also stated of the forfeited shares issued as fully paid up for cash consideration of each share at Rs. 1,000/-. This is, at best, a matter of accounting and not a matter of interpretation and cannot affect the larger question on the meaning and ambit of Section 75(5) of the Companies Act, 1956.

31. Per these reasons the application must fail and is dismissed with costs.