
(2011) 05 DEL CK 0289
In the Delhi High Court
Case No : LPA No. 10 of 2005

Jasdev Singh and Others

APPELLANT

Vs

Unit Trust of India

RESPONDENT

Date of Decision : 02-05-2011

Acts Referred:

Companies Act, 1956 — Section 291, 292, 292(1)(d), 77A
Constitution of India, 1950 — Article 14, 226

Citation : (2011) 4 ILR Delhi 185

Hon'ble Judges : Dipak Misra, C.J; Sanjiv Khanna, J

Bench : Division Bench

Advocate : A.N. Haksar, with Mrs. Nisha Bagchi and Mr. Udayan Jain, for the Appellant; Parag P. Tripathi, ASG with Mr. Vibhu Bakhru, Shadan Earosat, Avnesh Arputham, Ms. Mahima Gupta, Gaurav Chauhan, Ms. Ekta Kapil and Ms. Diksha Mehta, for the Respondent

Final Decision : Allowed

Judgement

Sanjiv Khanna, J.—The appellants Jasdev Singh, Gurdev Singh and Richa Consultants Pvt. Limited, by this Intra Court appeal, have assailed the judgment dated 26th October, 2004 passed by the learned Single Judge dismissing their writ petition. Learned single Judge has held that the appellant No. 3 had furnished an incomplete application for re-purchase of units under the Unit Scheme 1964 (US 64 or units, for short) on 30th May, 2001 and, therefore, the respondent Unit Trust of India had rightly refused to accept the units and make payment. The question which arises for consideration in the present appeal is whether the application submitted by the appellant No. 3 on 30th May, 2001 was incomplete and liable to be rejected. The facts are almost undisputed and the principal issue pertains to the interpretation of the terms of the brochure and statutory requirements of the Companies Act, 1956 (Act, for short).

2. The appellant No. 3 is a corporate body and it is a limited company incorporated under the Act. It had purchased US 64 units as per the details given

below:-

3. At the time of purchase, the appellant No. 3 had complied with the following requirements stipulated in clause 20(6) for the purchase of US 64 units.

Documents to be submitted for Registered Societies and Companies:

Certified true copy of documents such as Certificate of Incorporation, Memorandum and Articles of Association, Bye Laws, certified true copy of the resolution of the Managing Body authorising investment in units including authority granted in favour of the officials signing the application for units together with their specimen signatures, etc. should be submitted. The officials should sign the application under their official designations.

4. There is no dispute that the appellant No. 3 at the time of purchase, had complied with the requirements of the abovementioned clause by enclosing Certificate of Incorporation, Memorandum and Articles of Association, certified true copy of the resolution passed by the Managing Body authorising the investment including the authority granted in favour of the appellant No. 2 Gurdev Singh for making the application for allotment with his specimen signatures.

5. On 30th May, 2001, appellant No. 3 lodged the original US 64 units for repurchase along with a covering letter. The units were duly discharged as prescribed on the backside of the US 64 certificates. Photocopy of the discharged US 64 certificates have been placed on record which show that the discharge was duly signed by the appellant No. 2 Gurdev Singh i.e. the same person in whose favour authority letter had been issued by the company, appellant No. 3, at the time of investment. On the backside of the certificate stamp of the appellant No. 3 was also affixed. The discharge was witnessed.

6. On 15th June, 2001, the respondent returned the units with the objection "resolution for disinvestment letter is not there". The letter further indicated that the appellant No. 3 should resubmit the units after 30th June, 2001, as there was book closure till the said date.

7. Appellant No. 3 re-lodged the US 64 units for payment along with the copy of the resolution dated 12th May, 2001, but the respondent refused to accept the same in view of the decision not to repurchase US 64 units from 2nd July, 2001 onwards. Correspondence followed but no positive response emanated therefrom.

8. The appellants filed writ petition 1887/2002 on or about 19th March, 2002. Notice on the writ petition was issued to the respondent. After filing of the writ petition, Unit Trust of India (Transfer of Undertaking and Repeal) Ordinance 2002, was promulgated dividing the respondent into 2 undertakings. US 64 units came to be vested in the Administrator of the specified undertaking of the Unit Trust of India. The Ordinance was subsequently replaced by an Act. On 11th March, 2003, the Administrator offered an option to convert US 64 @ Rs. 12/- for first 5000 US 64 units and @ Rs. 10/- for the balance units. By letter dated 28th

March, 2003, appellant No. 3 accepted the option without prejudice to its rights and contentions raised in the writ petition. The bonds issued have been now redeemed and the appellant No. 3 has been paid interest as stipulated therein.

9. The core issue pertains to the differential value in case the application for redemption/repurchase filed on 30th May, 2001 had been accepted and the face value of the bonds issued in 2003 of Rs. 12 each for the first 5000 US 64 units and Rs. 10 each for the remaining units. The purchase value of the units as on 30th May, 2001, it is admitted was Rs. 14.25. Thus, claim of the appellant No. 3 is for the difference between Rs. 14.25 and Rs. 12 for the first 5000 units and between Rs. 14.25 and Rs. 10 for the balance units. In monetary terms the claim is for refund of Rs. 19,60,728/- with interest.

10. As noticed above, the respondent had rejected the repurchase application submitted by the appellant No. 3 for the reason that the repurchase application was not supported by the resolution of the Board of Directors of the respondent No. 3 for disinvestment. Question is whether any such resolution was required to be submitted as per the terms of the brochure or whether there is any such statutory requirement under the Act.

11. The relevant clauses of the brochure relating to repurchase of US 64 Units read as under:-

10. Bank Account/ECS Particulars

(i) Bank particulars of investors

It is mandatory for an investor to furnish full details of his/her bank account, such as nature of account, the account number and name of the bank and the branch, address with pin code etc. at the appropriate place in the application form, IDWs, if applicable, and repurchase cheque will then be made out in the name of the member with his bank particulars and sent to him for credit to his band (sic) account so specified.

(ii) Application without bank particulars will not be accepted/processed.

11. Repurchase

The scheme provides instant liquidity throughout the year except during the period of book closure. Where a unit holder desires to offer his holding for repurchases, all he has to do is to submit at any UTI branch office, his membership advice/statement of account/unit certificate duly discharged. The units will be repurchased at the prevalent repurchase price. Partial repurchase is also allowed provided that no repurchase so made results in the unit holder having a balance of less than 200 units in a membership advice/statement of account/unit certificate. For repurchase of demated units, a unit holder has to approach the nearest UTI branch office through his Depository Participant (DP). The UTI branch office will dispatch the repurchase cheque to the address of the unit holder.

19. General

(i) Units issued under the scheme are subject to the provisions of Unit Scheme 1964.

(ii) In case the application is found to be incomplete, the same will be liable for rejection and refund of such application money will be made by the Trust as soon as possible without any interest whatsoever. If any application is discovered to have been made under a false declaration/certificate, it will be rejected forthwith and the Trust shall have the right, in such an event, to repurchase the units at such price as may be decided by the Trust and recover the income distribution, if any, wrongly paid from out of the repurchase proceeds and return the balance.

(iii) All investments in the scheme are subject to market risks and the NAV of schemes/plans may go up or down depending upon the factors and forces affecting securities market. Past performance is not necessarily indicative of the future. There can be no assurance that the objective of the scheme will be achieved. "US-64" is only the name of the scheme and does not in any manner indicate either the quality of the scheme, its future prospects or returns.

12. A perusal of the aforesaid clauses would indicate that detailed instructions had been given in the brochure about the procedure for repurchase. The US 64 units had to be duly discharged and could be submitted any time in the year except during the book closure. The US 64 units had been submitted on 30th May, 2001, before the book closure. They were accepted at the counter set up by the respondent for repurchase. It is not in dispute that clause 10 of the brochure was also duly complied with as the appellant No. 3 had given details of its bank account.

13. Clause 20(6) relates to the submission of documents by the companies or registered societies at the time of purchase. The said clause has been quoted above. It does not stipulate that at the time of repurchase, the copies of the same documents i.e. certificate of incorporation, Memorandum and Articles of Association, true certified copy of the resolution of the Managing Body for repurchase including authority granted in favour of the official were required to be submitted. The brochure published by the respondent was detailed. A person who wanted to lodge units for repurchase was required to examine the brochure and comply with the terms and conditions mentioned therein. Nothing prevented the respondent from indicating and stating in the brochure that at the time of repurchase also, in the case of a registered society or a company, a certified copy of the resolution of the Managing Body and the authority of the person submitting the application should be submitted.

14. It may be noticed in the present case that the person who had submitted the application for repurchase and had discharged the certificate on behalf of the appellant No. 3 was the same person who had been authorised by the resolution of the Managing Body to purchase the units i.e. the appellant No. 2 Gurdev Singh. It is not the case wherein a different person had submitted the application

for discharge and repurchase of the US 64 Units.

15. Clause 19 of the brochure permitted and allowed the respondent to reject an application which was found to be incomplete. Whether or not the application was incomplete has to be decided by examining the terms of the brochure and not by introducing terms and conditions not mentioned in the brochure. Extraneous factors not mentioned in the brochure cannot be taken into consideration. The respondent, therefore, could have rejected the application submitted by the appellant No. 3 on 30th May, 2001, on the ground that application was incomplete in terms of the brochure and not for extraneous reasons and grounds. In addition, violation or non compliance with any other statutory requirement, if applicable, would also be a valid ground.

16. The respondent has contended that the term "investment" used in clause 20(6) includes "disinvestment" or "repayment". The argument is self-contradictory. It is accepted by the respondent that the appellant No. 3 had submitted a resolution dated 16th July, 1999, under which it was resolved as under:-

Resolved that the Company may invest an amount upto Rs. 50.00 lacs into Unit Trust of India's US-64 securities as soon as possible.

Further resolved that the Managing Director Sh. Gurdev Singh be and is hereby authorised to take the necessary steps in this regard.

17. If the term "investment" includes "disinvestment", then by the same resolution, the appellant No. 3 had resolved and permitted the Managing Director Gurdev Singh to take "necessary steps" for disinvestment or repurchase. The same resolution would be good and equally valid for repurchase.

18. The next question whether there was violation or non compliance of the Act. Reliance placed by the respondent on Section 292 of the Act is again misconceived. Sections 291 and 292 of the Act read as under:-

291. General powers of Board.-(1) Subject to the provisions of this Act, the Board of directors of a company shall be entitled to exercise all such powers, and to do all such acts and things, as the company is authorised to exercise and do:

Provided that the Board shall not exercise any power or do any act or thing which is directed or required, whether by this or any other Act or by the memorandum or articles of the company or otherwise, to be exercised or done by the company in general meeting:

Provided further that in exercising any such power or doing any such act or thing, the Board shall be subject to the provisions contained in that behalf in this or any other Act, or in the memorandum or articles of the company, or in any regulations not inconsistent therewith and duly made thereunder, including regulations made by the company in general meeting.

(2) No regulation made by the company in general meeting shall invalidate any

prior act of the Board which would have been valid if that regulation had not been made.

292. Certain powers to be exercised by Board only at meeting.-(1) The Board of directors of a company shall exercise the following powers on behalf of the company, and it shall do so only by means of resolutions passed at meetings of the Board-

(a) the power to make calls on shareholders in respect of money unpaid on their shares; 1[(aa) the power to authorise the buy-back referred to in the first proviso to clause (b) of sub-section

(2) of Section 77-A;]

(b) the power to issue debentures;

(c) the power to borrow moneys otherwise than on debentures;

(d) the power to invest the funds of the company; and

(e) the power to make loans: Provided that the Board may, by a resolution passed at a meeting, delegate to any committee of directors, the managing director, the manager or any other principal officer of the company or in the case of a branch office of the company, a principal officer of the branch office, the powers specified in clauses (c), (d) and (e) to the extent specified in sub-sections (2), (3) and (4) respectively, on such conditions as the Board may prescribe:

Provided further that the acceptance by a banking company in the ordinary course of its business of deposits of money from the public repayable on demand or otherwise and withdraw able by cheque, draft, order or otherwise, or the placing of moneys on deposit by a banking company with another banking company on such conditions as the Board may prescribe, shall not be deemed to be a borrowing of moneys or, as the case may be, a making of loans by a banking company within the meaning of this section.

Explanation I.-Nothing in clause (c) of sub-section (1) shall apply to borrowings by a banking company from other banking companies or from the Reserve Bank of India, the State Bank of India or any other banks established by or under any Act.

Explanation II.-In respect of dealings between a company and its bankers, the exercise by the company of the power specified in clause (c) of sub-section (1) shall mean the arrangement made by the company with its bankers for the borrowing of money by way of overdraft or cash credit or otherwise and not the actual day-to-day operation on overdraft, cash credit or other accounts by means of which the arrangement so made is actually availed of.

(2) Every resolution delegating the power referred to in clause (c) of sub-section (1) shall specify the total amount outstanding at any one time up to which moneys may be borrowed by the delegate.

(3) Every resolution delegating the power referred to in clause (d) of sub-section (1) shall specify the total amount up to which the funds may be invested, and the nature of the investments which may be made, by the delegate.

(4) Every resolution delegating the power referred to in clause (e) of sub-section (1) shall specify the total amount up to which loans may be made by the delegate, the purposes for which the loans may be made, and the maximum amount of loans which may be made for each such purpose in individual cases.

(5) Nothing in this section shall be deemed to affect the right of the company in general meeting to impose restrictions and conditions on the exercise by the Board of any of the powers specified in sub-section (1).

19. Section 291 of the Act, 1956, postulates that the Board of Directors are entitled to exercise all powers, do such acts and things as the Company has authorised them to exercise and do, except a particular matter which is required by the Act or by the Memorandum and Articles of Association to be done in a general meeting.

20. It is not the case of the respondent that the Articles and Memorandum of Association put an embargo or a fetter on the Board of Directors or that under the Act, permission of the general meeting was required for submitting of an application for repayment of the US 64 units. Section 292(1)(d), deals with power to make investment of the funds of the company. In broad sense, the term investment will include purchase of stock, shares, securities and application of money for purchase of property from which interest and profit is expected (Re, Wragg 1919 2 Ch 58). It means loss of the fluid character of money by a substituted asset possessing fixity or durable character while it lasts. The requirement u/s 292(1)(d) is that there should be a Board resolution and by a resolution the power may be delegated to a committee of Directors, Managing Director or any other principal officer of the company subject to the extent/value being specified and on such conditions as the Board may specify. Passing of a resolution is an internal requirement and has to be satisfied by the company making the investment. It has been observed in *Ferrom Electronics Private Limited v Vijaya Leasing Limited*. 2000 (1) CLC 1216, that the company in whose shares money is invested cannot refuse to accept transfer of shares except for bona fide reasons and in the interest of the shareholders. The company should proceed with the assumption that provisions of Section 292 have been complied with by the investing company unless there is evidence to the contrary. It has been observed as under:-

14. Shares of the company registered under the Act whose shares are quoted at the stock exchange are freely transferable. A shareholder has a right to transfer his shares. Correspondingly, in the absence of any impediment in this behalf, the transferee of shares in order to enable him to exercise the rights of a shareholder as against the company and third parties, is entitled to have the shares transferred in his name. In case a company refuses to transfer the shares it is

entitled to have rectification of the register by registering therein as a registered shareholder of the shares transferred to him. The company whose shares have been purchased cannot refuse to register the shares arbitrarily or for any collateral purpose. It can be refused only for a bona fide reason in the interest of the company and the general interest of the shareholders. It is seen from the correspondence between the petitioner-company and the respondent-company that the respondent-company has very evasively resisted admitting and effecting the necessary changes in the register of members on the ground that the application for registration of the transfer was in violation of the Act. Despite specific query on the aspect of the violation of the provisions of the Act, except to state that there was violation of section 292 of the Act, no material particulars have been given regarding the violation.

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[p. 400 of 2 CLA] Similarly, in *Shailesh Prabhudas Mehta and Others Vs. Calico Dying and Printing Mills Ltd.*, again Supreme Court held that the transferee has a right to have the rectification of the register of shares of the company. The company can refuse to register the shares only on specific grounds in exercise of its bona fide reason and not arbitrary or for collateral purposes. Case set up by the respondent that it has refused to register the shares as the petitioner-company did not comply with the provisions of section 292 of the Act is wholly untenable and clearly an afterthought. Respondent in its objections regarding the transfer of shares as per letter dated 9th September, 1989 at Annexure G had specifically set out the various objections they had regarding the transfer of shares. In the said objections, the respondent-company did not at all set up that the provisions of section 292 had not been complied with. Moreover, section 292 does not at all relate to transfer of shares. u/s 292, the powers which can be exercised by the Board of directors by passing a resolution have been specified to be -

- (a) the power to make calls on shareholders in respect of money unpaid on their shares;
- (b) the power to issue debentures;
- (c) the power to borrow moneys otherwise than on debentures;
- (d) the power to invest the funds of the company; and
- (e) the power to make loans

Section 292 being a matter of internal management of the company the respondent-company should have proceeded with the assumption that the petitioner-company had complied with the provisions of section 292 in the absence of any specific evidence to the contrary. Refusal of the respondent-company to register the transfer on this ground was unjustified. In spite of repeated queries raised by the petitioner-company asking the respondent-company to identify the aspect of section 292 which the petitioner-company

failed to comply with, the respondent-company could not specifically say as to which clause of section 292 had not been complied with by the petitioner-company. Refusal to register the shares by the respondent-company under the circumstances cannot be held to be justified at all.

(emphasis supplied)

21. In the present case, appellant No. 3, a company, wanted its investment in the said units liquidated and the investment converted into liquid money. It is extremely doubtful whether Section 292(1)(d) would be applicable for making a repurchase i.e. encashment of the investment and conversion into cash, which is opposite and antithesis of investment. Further as noticed above, in case the word "investment" includes "disinvestment" then the earlier resolution passed by the Board of Directors dated 16th July, 1999 quoted above would be equally applicable, when the appellant No. 3 had made the application for repurchase. However this aspect need not be conclusively decided in the present case for the reasons stated below.

22. Submission of the Board resolution to a third person is not statutorily required even when Section 292 of the Act is attracted. Section 292 was not violated when Board resolution was not enclosed with the application for repurchase. There is no such requirement or condition stipulated in Section 292 of the Act. As per Section 292(1)(d) it was not necessary to enclose the Board resolution with the application for repurchase. Secondly, violation of Section 292 may have its own impact and effect but a third person cannot reject an application for repurchase on the ground of suspicion or assumption that there was non-compliance of Section 292 of the Act. As far as the third person is concerned, if the application was found to be in order and if the third person/party was not aware of any dispute, doubt or reason to believe that there was noncompliance of section 292, he was bound to comply with the request made for discharge of the investment and repay. The respondent could not have assumed that act of repurchase was irregular/illegal, there were disputes or the Board of Directors had not passed any resolution. There was no cause or reason for suspicion and doubt. The respondent has not pleaded and given any ground or reason for any doubt. Doctrine of indoor management applies unless there are grounds to apply rule of constructive notice. Formalities are normally assumed. The later rule applies when there are grounds or reasons to suspect that the person is acting beyond his authority. It has been observed in *M.R.F. Ltd. Vs. Manohar Parrikar and Others*,

110. The doctrine of indoor management is also known as the Turquand rule after *Royal British Bank v. Turquand*. In that case, the Directors of a company had issued a bond to Turquand. They had the power under the articles to issue such bond provided they were authorised by a resolution passed by the shareholders at a general meeting of the company. But no such resolution was passed by the company. It was held that Turquand could recover the amount of the bond from the company on the ground that he was entitled to assume that

the resolution was passed.

111. The doctrine of indoor management is in direct contrast to the doctrine or rule of constructive notice, which is essentially a presumption operating in favour of the company against the outsider. It prevents the outsider from alleging that he did not know that the constitution of the company rendered a particular act or a particular delegation of authority ultra vires. The doctrine of indoor management is an exception to the rule of constructive notice. It imposes an important limitation on the doctrine of constructive notice. According to this doctrine, persons dealing with the company are entitled to presume that internal requirements prescribed in the memorandum and articles have been properly observed. Therefore, doctrine of indoor management protects outsiders dealing or contracting with a company, whereas doctrine of constructive notice protects the insiders of a company or corporation against dealings with the outsiders. However, suspicion of irregularity has been widely recognised as an exception to the doctrine of indoor management. The protection of the doctrine is not available where the circumstances surrounding the contract are suspicious and therefore invite inquiry.

112. This exception was highlighted in the English case of *Houghton & Co. v. Nothard, Lowe & Wills Ltd.*, where the case involved an agreement between fruit brokers and fruit importing company. There was an allegation that the agreement was entered into by the company's directors without authority. It was held that the nature of transaction was found to have been such as to put the plaintiffs on inquiry. To this effect Sargant, L.J. held: (KB p. 267)

Cases where the question has been as to the exact formalities observed when the seal of a company has been affixed, such as *Royal British Bank v. Turquand* or *County of Gloucester Bank v. Rudry Merthyr Steam and House Coal Colliery Co.*, are quite distinguishable from the present case. In *Fireproof Doors Ltd.*, *In re*, tends rather against than in favour of the plaintiffs, since if a single director has as towards third parties the authority now contended for, the whole of the elaborate investigation of the facts in that case was entirely unnecessary. Perhaps the nearest approach to the present case is to be found in *Biggerstaff v. Rowatt's Wharf Ltd.* But there the agent whose authority was relied on had been acting to the knowledge of the company as a managing director, and the act done was one within the ordinary ambit of the powers of a managing director in the transaction of the company's affairs. It is, I think, clear that the transaction there would not have been supported had it not been in this ordinary course or had the agent been acting merely as one of the ordinary directors of the company. I know of no case in which an ordinary director, acting without authority in fact, has been held capable of binding a company by a contract with a third party, merely on the ground that that third party assumed that the director had been given authority by the Board to make the contract. A limitation of the right to make such an assumption is expressed in *Buckley on the Companies Acts*, 10th Edn., p. 175, in the following concise words: "And the

principle does not apply to the case where an agent of the company has done something beyond any authority which was given to him or which he was held out as having."

113. This exception to the doctrine of indoor management has been subsequently adopted in many Indian cases. They are *B. Anand Behari Lal v. Dinshaw and Co. (Bankers) Ltd.* and *Abdul Rahman Khan v. Mufassal Bank Ltd.* Applying the exception to the present scenario, there is sufficient doubt with regard to the conduct of the Power Minister in issuing the Notifications dated 15-5-1996 and 1-8-1996. Therefore, there is a definite suspicion of irregularity which renders the doctrine of indoor management inapplicable to the present case.

23. Neither want of resolution, nor the defect in the Board of Directors can adversely affect the rights of the third parties who have no knowledge of existence of infirmities when dealing with the company [See *Raja Bahadur Shivilal Motilal Vs. The Tricumdas Mills Company Limited*, The respondent could not, on its own and without cause, presume that the repurchase application was an illegal/irregular act, that they should be suspicious and clarify their doubts. There has to be a reason and justification to invoke the rule of constructive notice which requires some doubt or suspicion. There is no such allegation in the present case. In case there was any doubt, it was open to the respondent to write a letter and get it clarified. No such process was undertaken. On the other hand, the application for repurchase was rejected.

24. The respondent has relied upon *Ashok Viniyoga Ltd. Vs. The Commissioner of Income Tax, (Central) Calcutta*, *Commissioner of Income Tax, Nagpur Vs. Sutlej Cotton Mills Supply Agency Ltd.*, and *Gaya Sugar Mills Ltd. Vs. Nand Kishore Bajoria and Another*, Decisions in these cases are not apposite and do not deal with the question/interpretation of Section 292 of the Act. In *M/s Ashok Viniyoga Ltd.* (supra) the question was whether the appellant-assessee's income was from business or realization of investments. In this context the resolution passed by the Board of Directors for purchase of shares was examined. In *M/s Sutlej Cotton Mills* (supra) again the question was whether the income earned was revenue or capital receipt. In *Gaya Sugar Mills* (supra) a scheme was framed to pay off the preference shareholders and thereby reduce capital of the company. But, neither meeting of creditors was held, nor sanction of the court was taken and the scheme never got implemented. However, the two persons appointed as trustees sold the shares and the sale proceeds were utilized for redemption of the preference shares. The company was subsequently wound up and the Official Liquidator made an application to recover the amount realized by the trustees. The Supreme Court held that till the scheme was sanctioned and the share capital was reduced, the preference shareholders had not acquired any right and the amount realized by the trustees was property of the company under liquidation. It is well settled that it is the ratio of the decision that is binding. The aforesaid decisions do not assist the pleas of the respondent.

25. By order dated 9th November, 2010, respondent was asked to file an affidavit about the practice and incidence of resolution adopted by it at the time of repurchase. Respondent has filed a vague affidavit stating, inter alia, that at least 8 companies had submitted specific resolutions at the time of repurchase of units. The question is whether the respondent had accepted application for repurchase without any Board resolution in other cases. Merely because in some cases board resolutions were filed, it does not mean that no application was to be accepted without copy of a specific resolution. There can be variety of reasons why Board resolution was furnished e.g. change of the official who had signed the discharge certificate.

26. It is submitted on behalf of the respondent that it was entitled to reject the application for repurchase on the grounds and reasons not mentioned in the brochure or even when there was no statutory violation. The respondent was entitled to ask for the Board resolution and its conduct in rejecting the application for repayment was reasonable. The submission should be rejected. The relationship between the petitioner No. 3 and the respondent was essentially contractual, and the parties were/are bound by the terms mutually accepted though the respondent being the State must adhere to and meet the standards prescribed as required by the Constitution from a State instrumentality. There was no requirement to furnish a copy of the Board resolution as per the agreed terms. Terms of a contract cannot be amended unilaterally and required mutual consent. Upholding power of unilateral imposition of conditions would give the respondent an infinite and unfettered right to accept or reject an application for reasons, which could be clarified or something which could be a mere surmise or conjecture. This would cause prejudice to the consumers or the unit holders. The sale and purchase of US 64 units was on the basis of the price fixed by the respondent but the net asset value of the unit was known only to the respondent and was confidential. It is apparent that in the present case there was difference in the sale/purchase price and net asset value of the US 64 unit. This information was not in public domain. Accepting the stand of the respondent would mean that even if the unit holder had submitted a proper and complete application as per the requirement of the brochure and as per law, the same could be rejected for any reasons, which the respondent perceived was reasonable. Any apprehension or doubt would be sufficient ground to reject the application though the apprehension was actually unfounded. This contention, if accepted, would cause prejudice and leave the unit holders at the mercy and discretion of the respondent, giving the respondent an unwarranted and unqualified upper hand to accept or reject the application. It may be noted that the problem has arisen in the present case because of the difference between the buying/selling price prior to 30th May, 2001 and the actual net asset value of the US 64 units. This was in the internal knowledge of the respondent and there is substance in the allegation made by the appellants that the attempt has been to deny repayment by raking up issues and giving reasons, which were not stipulated in the brochure. If the respondent wanted the unit holders to comply with the

further conditions, it could have informed or published the conditions by public notice or by other means. The respondent could not have unilaterally imposed fresh conditions on their own even without informing the public or the unit holders. Accepting the said contention would be unfair and unjust to unit holders, who have acted as per the brochure and while submitting the application for encashment have not violated any provision of law.

27. On the question whether a writ is maintainable, the issue is settled in favour of the appellant and is covered by the decision of the Supreme Court in the ABL International Ltd. and Another Vs. Export Credit Guarantee Corporation of India Ltd. and Others, In this case it was held that if a state instrumentality acts in an arbitrary manner even in a matter of contract, then the aggrieved party may approach the court under Article 226 and the Court is within its powers to grant appropriate relief based on the facts of that particular case. The relevant paragraphs 10, 19, 23, 25 and 27 are reproduced below:-

10. It is clear from the above observations of this Court in the said case, though a writ was not issued on the facts of that case, this Court has held that on a given set of facts if a State acts in an arbitrary manner even in a matter of contract, an aggrieved party can approach the court by way of writ under Article 226 of the Constitution and the court depending on facts of the said case is empowered to grant the relief. This judgment in K.N. Guruswamy v. State of Mysore was followed subsequently by this Court in the case of D.F.O. v. Ram Sanahi Singh wherein this Court held: (SCC p. 865, para 4)

By that order he has deprived the respondent of a valuable right. We are unable to hold that merely because the source of the right which the respondent claims was initially in a contract, for obtaining relief against any arbitrary and unlawful action on the part of a public authority he must resort to a suit and not to a petition by way of a writ. In view of the judgment of this Court in K.N. Guruswamy case there can be no doubt that the petition was maintainable, even if the right to relief arose out of an alleged breach of contract, where the action challenged was of a public authority invested with statutory power.

(emphasis supplied)

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19. Therefore, it is clear from the above enunciation of law that merely because one of the parties to the litigation raises a dispute in regard to the facts of the case, the court entertaining such petition under Article 226 of the Constitution is not always bound to relegate the parties to a suit. In the above case of Gunwant Kaur this Court even went to the extent of holding that in a writ petition, if the facts require, even oral evidence can be taken. This clearly shows that in an appropriate case, the writ court has the jurisdiction to entertain a writ petition involving disputed questions of fact and there is no absolute bar for entertaining a writ petition even if the same arises out of a contractual obligation and/or involves some disputed questions of fact.

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23. It is clear from the above observations of this Court, once the State or an instrumentality of the State is a party of the contract, it has an obligation in law to act fairly, justly and reasonably which is the requirement of Article 14 of the Constitution of India. Therefore, if by the impugned repudiation of the claim of the appellants the first respondent as an instrumentality of the State has acted in contravention of the abovesaid requirement of Article 14, then we have no hesitation in holding that a writ court can issue suitable directions to set right the arbitrary actions of the first respondent.....

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25. The learned counsel for the respondent then contended that though the principal prayer in the writ petition is for quashing the letters of repudiation by the first respondent in fact the writ petition is one for a "money claim" which cannot be granted in a writ petition under Article 226 of the Constitution of India. In our opinion, this argument of the learned counsel also cannot be accepted in its absolute terms. This Court in the case of U.P. Pollution Control Board v. Kanoria Industrial Ltd. while dealing with the question of refund of money in a writ petition after discussing the earlier case-law on this subject held: (SCC pp. 556-58, paras 12 & 16-17)

12. In the para extracted above, in a similar situation as arising in the present cases relating to the very question of refund, while answering the said question affirmatively, this Court pointed out that the courts have made distinction between those cases where a claimant approached a High Court seeking relief of obtaining refund only and those where refund was sought as a consequential relief after striking down of the order of assessment etc. In these cases also the claims made for refund in the writ petitions were consequent upon declaration of law made by this Court. Hence, the High Court committed no error in entertaining the writ petitions.

* * *

16. In support of the submission that a writ petition seeking mandamus for mere refund of money was not maintainable, the decision in Suganmal v. State of M.P. was cited. In AIR para 6 of the said judgment, it is stated that "we are of the opinion that though the High Courts have power to pass any appropriate order in the exercise of the powers conferred under Article 226 of the Constitution, such a petition solely praying for the issue of a writ of mandamus directing the State to refund the money is not ordinarily maintainable for the simple reason that a claim for such a refund can always be made in a suit against the authority which had illegally collected the money as a tax".

17. Again in AIR para 9, the Court held:

We, therefore, hold that normally petitions solely praying for the refund of money against the State by a writ of mandamus are not to be entertained. The

aggrieved party has the right of going to the civil court for claiming the amount and it is open to the State to raise all possible defences to the claim, defences which cannot, in most cases, be appropriately raised and considered in the exercise of writ jurisdiction.

This judgment cannot be read as laying down the law that no writ petition at all can be entertained where claim is made for only refund of money consequent upon declaration of law that levy and collection of tax/cess is unconstitutional or without the authority of law. It is one thing to say that the High Court has no power under Article 226 of the Constitution to issue a writ of mandamus for making refund of the money illegally collected. It is yet another thing to say that such power can be exercised sparingly depending on facts and circumstances of each case. For instance, in the cases on hand where facts are not in dispute, collection of money as cess was itself without the authority of law; no case of undue enrichment was made out and the amount of cess was paid under protest; the writ petitions were filed within a reasonable time from the date of the declaration that the law under which tax/cess was collected was unconstitutional. There is no good reason to deny a relief of refund to the citizens in such cases on the principles of public interest and equity in the light of the cases cited above. However, it must not be understood that in all cases where collection of cess, levy or tax is held to be unconstitutional or invalid, the refund should necessarily follow. We wish to add that even in cases where collection of cess, levy or tax is held to be unconstitutional or invalid, refund is not an automatic consequence but may be refused on several grounds depending on facts and circumstances of a given case.

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27. From the above discussion of ours, the following legal principles emerge as to the maintainability of a writ petition:

(a) In an appropriate case, a writ petition as against a State or an instrumentality of a State arising out of a contractual obligation is maintainable.

(b) Merely because some disputed questions of fact arise for consideration, same cannot be a ground to refuse to entertain a writ petition in all cases as a matter of rule.

(c) A writ petition involving a consequential relief of monetary claim is also maintainable.

28. Learned single Judge has also not dismissed the writ petition on this ground. The writ petition was filed in 2002 and the present LPA was filed in 2005. We also do not think that it will be appropriate to non-suit the appellant on this ground after 8/9 years. As noticed above, we have proceeded on the principle whether there was any error in the decision making process i.e. whether the respondent could have introduced or imposed fresh conditions which were not mentioned in the brochure and when there was no violation of the statutory provisions. The

respondent could not have taken into consideration irrelevant material and, therefore, an error has occurred in the decision making process. The aforesaid error in the decision making process is amiable to judicial review and can be corrected in the writ proceedings. In view of the reasoning given above the appeal is allowed and writ of certiorari is issued quashing the letter of rejection dated 16th June, 2001 and mandamus is issued directing the respondent to pay Rs. 19,60,728/- with simple interest @ 8% per annum from 1st August, 2001 till payment is made. No costs.