(2023) 01 DEL CK 0101

In the Delhi High Court

Case No : Civil Writ Petition No. 6662 Of 2022, Civil Miscellaneous Application No. 20210 Of 2022

M/S V And A Solutions Pvt. Ltd — APPELLANT

Vs

Investor Education And Protection Fund Authority & Ors — RESPONDENT

Date of Decision : 18-01-2023

Acts Referred:
Companies Act, 2013 — Section 125

Citation : (2023) 01 DEL CK 0101

Hon'ble Judges : Prathiba M. Singh, J

Bench : Single Bench

Advocate : Vikas Gupta, Sohil Sharma, G.D. Sharma, Arvind Kumar

Judgement

Prathiba M. Singh, J

1. This hearing has been done through hybrid mode.

2. No reply has been filed despite time being given on 17th August, 2022 for filing of reply. On the next date of hearing i.e., on 6th January, 2023, the ld. Counsel for the Respondent had made a statement that the affidavit is ready. However, the said affidavit is now stated to be filed only yesterday i.e., 16th January, 2023 and the same is not on record.

3. Ld. Counsel for the Petitioner submits that he has been served with the copy of the affidavit on 6th January, 2023 itself.

4. A short affidavit has been filed by the Investor Education and Protection Fund Authority (IEPFA) sworn by Ms. Deepmala Bagri, Assistant Director, IEPFA. The said affidavit is not on record. A copy of the affidavit has been handed over to the Court.

5. The case of the Respondents is that insofar as the Petitioner is concerned, it is holding a total of 1950 shares. The details of the same are as under:

HLV Limited EQ New FV Rs.2/- 1000

TATA Motors Limited EQ New FV Rs.2/- 500

Jaiprakash Associates Limited EQ New Rs.2/- 450"

6. Ld. Counsel for the Petitioner, on the other hand, submits that these shares were lying in the Demat account with the proper PAN number and other details which were provided in respect of the said account. It is his submission that these could not have been construed as unclaimed shares by the Respondents.

7. On a query from the Court, Mr. Arvind Kumar, Junior Technical Assistant at IEPFA, who is present in Court, submits that the companies themselves transfer the shares to the IEPFA, which are then held by IEPFA. There is a procedure, in which by filling up the IEPFA file, the concerned shareholder can process a claim through the portal.

8. Ld. Counsel for the Petitioner, however, responds and submits that the Petitioner is unable to access these details on the portal. He further submits that from the IEPFA portal, it is not possible to ascertain whether the authority is, in fact, holding the shares of a particular person upon being transferred by the company. He further claims that other unconnected parties are having this information about individuals whose shares have become unclaimed shares. The said un-connected parties even contact people having unclaimed shares and offer to reclaim the shares by charging exorbitant commission.

9. At this point, ld. Counsel for the Respondents clarifies that the above stand of the Petitioner is incorrect. The IEFPA is a custodian on behalf of the shareholders and there is no misuse of the shares. He further submits that if the Petitioner wishes to visit the office of IEFPA, the required technical assistance can be provided to the Petitioner for filling of the claim for his shares.

10. Heard. The IEPF has been established under Section 125 of the Companies Act, 2013. The said provision is extracted as under:

125. Investor Education and Protection Fund.—

(1) The Central Government shall establish a Fund to be called the Investor Education and Protection Fund (herein referred to as the Fund).

(2) There shall be credited to the Fund—

(a) the amount given by the Central Government by way of grants after due appropriation made by Parliament by law in this behalf for being utilised for the purposes of the Fund;

(b) donations given to the Fund by the Central Government, State Governments, companies or any other institution for the purposes of the Fund;

(c) the amount in the Unpaid Dividend Account of companies transferred to the Fund under subsection (5) of section 124;

(d) the amount in the general revenue account of the Central Government which had been transferred to that account under sub-section (5) of section 205A of the Companies Act, 1956 (1 of 1956), as it stood immediately before the commencement of the Companies (Amendment) Act, 1999 (21 of 1999), and remaining unpaid or unclaimed on the commencement of this Act;

(e) the amount lying in the Investor Education and Protection Fund under section 205C of the Companies Act, 1956 (1 of 1956);

(f) the interest or other income received out of investments made from the Fund;

(g) the amount received under sub-section (4) of section 38;

(h) the application money received by companies for allotment of any securities and due for refund;

(i) matured deposits with companies other than banking companies;

(j) matured debentures with companies;

(k) interest accrued on the amounts referred to in clauses (h) to (j);

(l) sale proceeds of fractional shares arising out of issuance of bonus shares, merger and amalgamation for seven or more years;

(m) redemption amount of preference shares remaining unpaid or unclaimed for seven or more years; and

(n) such other amount as may be prescribed: Provided that no such amount referred to in clauses (h) to (j) shall form part of the Fund unless such amount has remained unclaimed and unpaid for a period of seven years from the date it became due for payment.

(3) The Fund shall be utilised for—

(a) the refund in respect of unclaimed dividends, matured deposits, matured debentures, the application money due for refund and interest thereon;

(b) promotion of investors�ation, awareness and protection;

(c) distribution of any disgorged amount among eligible and identifiable applicants for shares or debentures, shareholders, debenture-holders or depositors who have suffered losses due to wrong actions by any person, in accordance with the orders made by the Court which had ordered disgorgement;

(d) reimbursement of legal expenses incurred in pursuing class action suits under sections 37 and 245 by members, debenture-holders or depositors as may be sanctioned by the Tribunal; and

(e) any other purpose incidental thereto, in accordance with such rules as may be prescribed:

Provided that the person whose amounts referred to in clauses (a) to (d) of sub-section (2) of section 205C transferred to Investor Education and Protection

Fund, after the expiry of the period of seven years as per provisions of the Companies Act, 1956 (1 of 1956), shall be entitled to get refund out of the Fund in respect of such claims in accordance with rules made under this section. Explanation.—The disgorged amount refers to the amount received through disgorgement or disposal of securities.

(4) Any person claiming to be entitled to the amount referred in sub-section (2) may apply to the authority constituted under sub-section (5) for the payment of the money claimed.

(5) The Central Government shall constitute, by notification, an authority for administration of the Fund consisting of a chairperson and such other members, not exceeding seven and a chief executive officer, as the Central Government may appoint.

(6) The manner of administration of the Fund, appointment of chairperson, members and chief executive officer, holding of meetings of the authority shall be in accordance with such rules as may be prescribed.

(7) The Central Government may provide to the authority such offices, officers, employees and other resources in accordance with such rules as may be prescribed.

(8) The authority shall administer the Fund and maintain separate accounts and other relevant records in relation to the Fund in such form as may be prescribed after consultation with the Comptroller and Auditor-General of India.

(9) It shall be competent for the authority constituted under sub-section (5) to spend money out of the Fund for carrying out the objects specified in sub-section (3).

(10) The accounts of the Fund shall be audited by the Comptroller and Auditor-General of India at such intervals as may be specified by him and such audited accounts together with the audit report thereon shall be forwarded annually by the authority to the Central Government.

(11) The authority shall prepare in such form and at such time for each financial year as may be prescribed its annual report giving a full account of its activities during the financial year and forward a copy thereof to the Central Government and the Central Government shall cause the annual report and the audit report given by the Comptroller and Auditor-General of India to be laid before each House of Parliament."

11. The functioning of the IEPFA is governed by The Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund) Rules, 2016.

12. The IEPFA is an authority, which has been created to protect the interest of the investors so that the unclaimed shares do not fall into wrong hands and are not misused. The authority has been given the responsibility to hold the shares for and on behalf of the investors. The investor should be able to claim the

shares from the authority as per the procedure, which has been prescribed through the portal. However, in order to make it easier for the investors to access and find out if IEPFA is holding any of their shares, on the ground that the same have not been dealt with for more than 7 years and the companies have transferred the same, the IEPFA could consider setting up further measures, which could be investor friendly such as -

(i) Creating a field of SEARCH with the demat account number. By availing this Search facility an investor ought to be able to access information relating to one's own shares, if lying with the IEPFA.

(ii) Opening of a HELPLINE in the IEPFA, which can be accessed by the investors to find out if any of their shares are lying with the IEPFA.

13. Insofar the Petitioner is concerned, ld counsel submits that since the IEPFA confirms that the shares are lying with it, the Petitioner is willing to take the help of the IEPFA staff and get back the shares. Accordingly, let the Petitioner's representative visit the Respondent's office and meet Mr. Arvind Kumar, Junior Technical Assistant, who would assist the Petitioner in seeking re-transfer of the unclaimed shares into its Demat Account.

14. Let the representative of the Petitioner visit the office of the IEPFA on 31st January, 2023 at 3:00 pm.

15. The Petitioner is free to approach the Court, if the required transfer of unclaimed shares is not undertaken or assistance is not provided.

16. Let the copy of the present order be served upon Ms. Anita Shah Akella, CEO, IEPFA at ceo_iepfa@mca.gov.in. Let the report in respect of the directions issued above, be placed on record in respect of directions given in paragraph 12 above.

17. The writ petition, along with all pending applications, is disposed of.

18. List on 29th March, 2023 for compliance.

