(2006) 11 DEL CK 0197

In the Delhi High Court

Case No : Writ Petition (C) 4881 of 2000

Phoenix Lamps India APPELLANT

Vs

Union of India (UOI) RESPONDENT

Date of Decision : 22-11-2006

Acts Referred:

Companies Act, 1956 — Section 629A, 97

Citation : (2006) 11 DEL CK 0197

Hon'ble Judges : Mukul Mudgal, J;J.P. Singh, J

Bench : Division Bench

Advocate : A.K. Chabra, for the Appellant; Suresh Kait, for the Respondent

Final Decision : Disposed Off

Judgement

Mukul Mudgal, J.—With the consent of the parties, the writ petition is taken up for final hearing.

2. This writ petition is filed with the following prayer:

a. issue an appropriate writ, order or direction declaring the Notification No. SO-565 (E) dated 21.6.1995 and consequent amendment to the Companies Act as ultravires the Constitution of India.

3. The said notification, inter alia, was also challenged in the Calcutta High Court. The learned Single Judge vide judgment dated 17.7.1997 set aside the notification dated 21.6.1995 and the said judgment was upheld by the Division Bench of Calcutta High Court vide judgment dated 3.8.2001 in G.A. No. 2572/2001. The said order stood challenged before the Hon''ble Supreme Court in Civil Appeal No. 1761/2002 and is pending consideration. Pursuant to the judgment of the Calcutta High Court striking down the notification, the petitioner filed writ petition in the present case and had consequently not paid the increased fees sought by the 1995 notification at the time of increase in its authorised capital. This payment was not made due to interim order passed by this Court. Thereafter on 27.1.2003 a circular was issued by the Ministry of

Finance which reads as follows:

General Circular No. : 7/2003 No. 2/5/2002-CL.V Government of India Ministry of Finance and Company Affairs Department of Company Affairs 5th Floor, ''A'' Wing,. Shastri Bhavan, Dr. Rajendra Prasad Road, New Delhi-110001.

Dated: 27th January, 2003

To All Regional Directors All Registrars of Companies

Subject: Refund of excess Registration Fees deposited by companies for Form No. 5. Sir

The Department had issued a notification No. S.O.419 (E) dated 27th April, 2000 revising Schedule X to the Companies Act, 1956 for filing a notice for increase in the nominal share capital of a company. In the said notification an anomaly had crept in, on arriving at the difference between the fees payable on the nominal share capital on the date of filing of the notice and the fees paid on the nominal share capital before the increase. Therefore, by a further notification of No. S.O. 658 (E) dated 12th July, 2000 effective from 12th July, 2000, the said anomaly was removed. The notification had come to notice of the public after a few days and during the intervening period, a few Companies had paid fees calculated on the basis of the notification dated 27th April, 2000 and thereby they had paid excess fees for registration of Form No. 5.

2. Companies have approached the department and courts for refund of the excess registration fees paid by them on account of the said anomaly.

3. The department has decided in consultation with Integrated Finance Division to refund the excess registration fees paid by Companies on or after 12.7.2000. It is, hereby, clarified that Companies may seek refund by making a fresh request to the concerned Registrar of Companies (ROC) with proof of excess payment. It is further clarified that only the actual excess registration fees and interest, if any, charged by the ROC on late filing of Form No. 5 would be refundable. The Companies will not claim any cost and interest.

4. ROC concerned will forward the claim of the Company duly certified by the concerned Pay and Accounts Officer to the department for issue of ''Refund Sanction Order''.

5. It is further clarified that no other notification other than notification No. S.O. 419 (E) dated 27th April, 2000 and notification No. S.O. 658 (E) dated 12th July, 2000 only are dealt with herein above.

6. This issues with the concurrence of Integrated Finance Division vide their Diary No. 51/CA/03 dated 20.01.2003.

Yours faithfully,

(N.K. Vig)

Under Secretary to the Govt. of India

(Ph: 23387174)

4. Accordingly, since the circular stands withdrawn and the judgment of the Calcutta High Court stands challenged before the Hon''ble Supreme Court, the appropriate course, in our view, would be to dispose of this writ petition by holding that since payment was not made pursuant to the order passed by this Court even if the respondent succeeds in the Hon''ble Supreme Court no penal proceedings shall be adopted against the petitioner u/s 97/629A of the Companies Act for any delay in the said payment. However, in case the respondent-UOI succeeds in the Hon''ble Supreme Court and the levy of higher fee is upheld, it will be open to the respondent to recover said increased fee from the petitioner without levying any penalty. Any further proceedings shall naturally be subject to the judgment of Hon''ble Supreme Court. Writ petition is disposed of.

