
(1959) 08 CAL CK 0035

In the Calcutta High Court

Case No : Appeal from Original Order No. 106 of 1957

Sri Gopal Jalan and Co.

APPELLANT

Vs

Calcutta Stock Exchange Association Ltd.

RESPONDENT

Date of Decision : 18-08-1959

Acts Referred:

Companies Act, 1956 — Section 100(b), 103(b)(iv), 104, 13(4), 159

Citation : 64 CWN 591

Hon'ble Judges : Lahiri, C.J.; Bachawat, J

Bench : Division Bench

Advocate : J.C. Maitra, for the Appellant; A.C. Mitra, for the Respondent

Final Decision : Dismissed

Judgement

Bachawat, J.—This appeal is from an order of P.B. Mukharji, J., refusing to direct the Calcutta Stock Exchange Association Limited to file a return of allotment of shares u/s 75 of the Indian Companies Act, 1956. The applicant is one of the shareholders of the Calcutta Stock Exchange Association Limited. The Association is a company limited by shares. The issued capital of the company consists of 277 fully paid up ordinary shares of Rs. 1,000/- each. Out of these shares, 70 shares were forfeited by the Association and later re-issued by it. The applicant alleges that it is the duty of the Association to file return of allotment in respect of the re-issue of these shares. The forfeiture of shares is authorised by the Articles of Association of the Calcutta Stock Exchange Association Limited. Article 21 authorised the Committee of the Association to expel or suspend any member in certain events. Articles 22, 24 and 27 are as follows : --

Article 22: - Any member who has been 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 from the date upon which he has been so declared a defaulter shall at the expiration of such period of six calendar months automatically cease to be a member.

Article 24: - 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 member shall ipso facto be forfeited.

Article 27: - Any share so forfeited shall be deemed to be the property of the Association, and the Committee shall sell, re-allot and otherwise dispose of the same in such manner 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.

2. It is now well-settled that these Articles are lawful and that forfeiture of shares on grounds other than non-payment of calls is valid and is not in contravention of the Indian Companies Act: see *Calcutta Stock Exchange Association, Ltd. v. S.N. Nundy & Co.*, ILR (1950) 1 Cal. 235; *Naresh Chandra Sanyal v. Ramani Kanto Roy*, 49 C.W.N. 502 .

3. The point in dispute is whether the company is bound to file a return of allotment in respect of the re-allotment and re-issue of these forfeited shares.

4. P.B. Mukharji, J., held that the company is not bound to file such a return and he accordingly dismissed the application.

5. Mr. Maitra contends that the forfeiture operates as an extinguishment of the forfeited shares so that the reissue of shares is really an issue of new shares in the share capital of the company and that as such the company is bound to file a return of allotment. I am unable to accept this contention.

6. Upon forfeiture of shares the original subscriber ceases to be a member in respect of the forfeited shares. The effect of forfeiture is thus described by Lord Watson in *Trevor v. Whit-worth*, (3) 12 App. Cas. 409 at 424 and 428-9: "When a share is forfeited or surrendered, the amount which has been paid upon it remains with the company, the share-holder being relieved of liability for future calls, whilst, the share itself reverts to the company, bears no dividend, and may be re-issued. * * * When shares are forfeited or surrendered and not re-issued, that affects only the nominal amount of the shares so far as unpaid; when they are brought and not reissued that diminishes the paid-up as well as the nominal capital."

7. The forfeited share reverts to the company, but it continues to exist as a unit of the paid-up and issued share capital. The statutory form of the annual return u/s 159 of the Indian Companies Act, 1956, set out in Part II of Schedule V of the Act shows that the forfeited shares and the amount paid thereon continue to be part of the issued capital. The statutory form of the balance-sheet set out in Part I of Schedule VI, read with section 211 of the Act, shows the amount paid up on the forfeited shares as part of the subscribed and paid up share capital of the company. *Das, J.*, in *Naresh Chandra Sanyal v. Ramani Kanto Roy*, 49 C.W.N.

502 observed: "The true position seems to me to be that the right of a particular share-holder is gone but the share, considered as a unit, exists and is kept in suspense until another holder is found for it by sale or re-allotment. It is earmarked as a species of capital, namely forfeited share."

8. The forfeited share also continues to exist as a unit of movable property though as long as it remains with the company it cannot be described as an interest of a member in the company. The property is at the disposal of the company and may be sold and transferred. If the forfeited share did not continue to exist as a unit of movable property it could not be sold and transferred.

9. Mr. Maitra contends that the balance-sheet of the company for the year ending September 30, 1955 shows that the company has extinguished the shares. The balance sheet states that part of the subscribed and paid up capital consists of Rs. 70,000/- received for 70 forfeited shares of Rs. 1,000/-each issued as fully paid up for cash consideration that 65 of these shares were originally issued as fully paid up for consideration other than cash and the remaining 5 shares were originally issued as fully paid-up for cash consideration. The market value of each fully paid up share of Rs. 1000/-each was not less than Rs. 40,000/-. Though the shares must have been reissued for cash consideration of not less than Rs. 40,000/- each, an amount equal to the face value of the shares has been credited in the capital account and the consideration originally received on them has been taken out of this account. Evidently the balance-sheet has been drawn up in accordance with the opinion expressed by Chakravartti. J., in *Calcutta Stock Exchange Association Ltd., v. S.N. Nundy & Co.*, ILR (1950) 1 Cal. 235 at 268 and 275. According to Chakravartti, J., on the forfeited share being resold or re-allotted, an amount equal to the face value of the share will be credited from the proceeds to the paid-up capital account and the same amount previously received on the share and held on the forfeited share account will be transferred to the profits account. Whether the opinion so expressed by Chakravartti, J., is correct or not is another matter. The mode of book-keeping cannot affect the point of substance. The balance-sheet does not establish that the company extinguished the forfeited shares. Under Article 27 the company was bound to sell and re-allot and otherwise dispose of the forfeited shares to the best advantage and to apply the proceeds for the satisfaction of the debts of the original subscriber. The company was bound to preserve the shares for the purposes of such disposal and could not cancel or extinguish them: see *Calcutta Stock Exchange Association Ltd. v. S.N. Nundy & Co.*, ILR (1950) 1 Cal. 235 at 257, 259 and 273. I may add that the petition in support of the application does not allege that the forfeited shares were extinguished. On the contrary the petition assumes that they continued to exist and were subsequently re-issued or transferred.

10. Mr. Maitra next contends that assuming that the forfeited shares were not extinguished, the re-allotment and re-issue of the forfeited shares amount to allotment of shares within the meaning of sub-section (1) of section 75 of the

Indian Companies Act, 1956.

11. The solution to the question turns upon the true interpretation of section 75 of the Indian Companies Act, 1956. That section is as follows: -

Section 75: "Return as to allotments. -- (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 occupations 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 file 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, the extent to which they are to be treated as paid up, and the consideration for which they have been 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.

(2) Where a contract such as is mentioned in clause (b) of sub-section (1) is not reduced to writing, the company shall, within one month after the allotment, file with the Registrar the prescribed particulars of the contract stamped with the same stamp duty as would have been payable if the contract had been reduced to writing; and those particulars shall be deemed to be an instrument within the meaning of the Indian Stamp Act, 1899 (II of 1899), and the Registrar may, as a condition of filing the particulars, require that the duty payable thereon be adjudicated u/s 31 of that Act.

(3) If the Registrar is satisfied that in the circumstances of any particular case the period of one month specified in sub-sections (1) and (2) for compliance with the requirements of this section is inadequate he may extend that period as he thinks fit; and if he does so, the provisions of sub-sections (1) and (2) shall have effect in that particular case as if for the said period of one month the extended period allowed by the Registrar were substituted.

(4) If default is made in complying with this section, every officer of the company who is in default shall be punishable with fine which may extend to five hundred rupees for every day during which the default continues:

Provided that, in case of default in filing with the Registrar any document required to be filed by this section within the time specified therein, 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.

(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.

12. P.B. Mukharji, J., thought that the clue to the true interpretation of section 75 is to be found in the context of sub-section (7) of section 69 of the Indian Companies Act, 1956. He thought that the allotment of shares referred to in sub-section (1) of section 75 meant the first allotment of new shares offered to the public for subscription. With respect, I am unable to agree with this line of reasoning. Sub-section (1) of section 69 prohibits allotment of any share capital of a company offered to the public for subscription, unless the minimum subscription is subscribed and paid. Sub-section (7) provides that the section, except sub-section (3) thereof, shall not apply in relation to any allotment of shares subsequent to the first allotment of shares offered to the public for subscription. The main object of section 69 is to ensure receipt by the company of the minimum amount required for working capital and for other matters specified in clause 5 of schedule II before the company makes the first allotment of shares offered to the public for subscription. Sub-section (3) of the section requires payment of not less than five per cent. of the nominal amount of the share on application for each share. Sub-section (7) of section 69 is obviously a rider to sub-sections (1), (2), (4), (5) and (6) of section 69. It cannot be read as a qualification of section 75. Section 75 requires a company having a share capital to file return of allotments whenever the company makes any allotment of its shares. The section applies whenever any allotment of shares is made. The object of the section is to require full disclosure of the allotments of shares and of the contracts, if any, in cases where shares, not being bonus shares, are allotted as fully or partly paid up otherwise than in cash. The section is not confined to the first allotment of shares offered to the public for subscription.

13. The question still remains whether the re-allotment of forfeited shares is an allotment of shares within the meaning of sub-section (1) of section 75.

14. Section 75 is one of a number of sections appearing in Part III of Chapter I of the Indian Companies Act, 1956. Part III of Chapter I is headed: "Prospectus And Allotment, And Other Matters Relating To Issue Of Shares Or Debentures." The allotment of shares referred to in sub-section (1) of section 75 is obviously a matter relating to the issue of shares. By section 2(46) "shares" means share in the share capital of a company.

15. By section 13(4) the memorandum of a company having a share capital must state the amount of its share capital as also the division of the capital into shares

of a fixed amount. The nominal capital so stated in the memorandum has only a notional existence. Real capital is raised by the subscription and issue of shares. An unissued share in the share capital of a company is not an existing article of property. The directors may issue shares up to the limit of the nominal capital. An issued share is a movable property. The issue brings the property into existence and, at the same time, confers on the allottee a title to the property so created. In re; V.G.M. Holdings Limited, (4) (1942) 1 Ch. 235 at 240-241 Lord Greene M.R. observed: "Mr. Wynn Parry endeavoured heroically to establish the proposition that a share before issue was an existing article of property, that it was an existing bundle of rights which a shareholder could properly be said to be purchasing when he acquired it by subscription in the usual way. I am unable to accept that view. * * * Putting it in a nutshell, the difference between the issue of a share to a subscriber and the purchase of a share from an existing shareholder is the difference between the creation and the transfer of a chose in action."

16. Usually shares are issued by the machinery of application and allotment. Part III of Chapter I of the Indian Companies Act, 1956 deals with this mode of issue. The allotment of shares precedes the issue of shares. Allotment of shares means appropriation of unissued shares to any particular person preliminary to the issue of shares. Issue of shares is something distinct from allotment and is some subsequent act whereby the title of the allottee becomes complete-per Lord Hanworth M.R. in Oswald Tillotson Limited v. Commissioners of Inland Revenue, (5) (1933) 1 K.B. 134, 155.

17. A re-allotment and re-issue of shares which have already been issued and have subsequently been forfeited is not an issue of shares. An issue of a share creates a movable property in the shape of the issued share. There can be no issue of a share which has already been issued and which is already an existing article of property.

18. The company has the power either to sell or to re-allot the forfeited shares, Obviously, a sale of the forfeited shares cannot be considered to be an allotment and issue of those shares. Usually, instead of selling the forfeited shares, the company re-allots and re-issues them. Such re-allotment and re-issue is a mode of disposal of the existing shares and is not an allotment and issue of shares.

19. In re: The Exchange Banking Company (Limited), Ramwell's case, (6) 50 L.J. Ch. (1881) (N.S.), 827, Bacon, V.C., had occasion to consider a case of sale of forfeited shares. The Articles of Association of the company empowered the company to sell, re-allot or otherwise dispose of the shares. Certain forfeited shares were sold to one Ram well at a discount of 70. The agreement of sale and purchase at a discount was not registered u/s 25 of the English Companies Act, 1867, which provided: "Every share in any company shall be deemed and taken to have been issued and to be held subject to the payment of the whole amount thereof in cash, unless the same shall have been otherwise determined by a contract duly made in writing, and filed with the Registrar of Joint Stock

Companies at or before the issue of such shares." In winding up of the company the liquidator contended that in view of the non-registration of the contract of sale at a discount, Ram well was bound to pay to the liquidator the sum of ₹70 allowed as discount on sale of the shares. Bacon, V.C., rejected this contention. He observed: "But they are no longer shares to which the registration clause applies; they are not shares "issued" by the company. The directors had these shares to sell, and they chose to sell them for ₹70 less than the full price. These shares were chattels in their possession-things they could sell, things they had acquired by reason of the forfeiture. There is no ground for saying that such a transaction ought to be registered, or that it was void for want of registration."

20. In *Morrison v. Trustees, Executors, And Securities Insurance Corporation*, (7) 68 L.J. Ch. 11, the Court of Appeal in England had occasion to consider an agreement to allot or issue forfeited shares. By the Articles of Association of the company the directors had power to sell, re-allot or otherwise dispose of the forfeited shares. By an agreement in writing the company agreed to allot or issue to the founders or as they might direct 11,447 forfeited ordinary shares, with ₹2-5s. per share credited as paid up on each share, at the price of ₹1,570-10s. The agreement was impeached as ultra vires the company. The Court of Appeal unanimously held that the agreement was not ultra vires. It is worth referring to the argument of Mulligan, Q.C., for the plaintiff appellant, for such argument is often repeated in like cases. Mulligan, Q.C., argued that when shares are forfeited there is no one who can be said to be a member of the company in respect of them; that they revert to the company, and become its property; that the company cannot be a shareholder in itself; that the forfeited shares must be regarded as unissued, and that what was proposed was, in effect, an issue of shares at a discount and that was illegal. These contentions were rejected by the Court of Appeal. Vaughan Williams, L.J., observed: "I do not like the use of the word "issue" with reference to the transaction with regard to these shares. If they were being issued, the argument for the appellant might possibly be right; but they are not being issued. When we look at the articles we see that what takes place on a forfeiture of shares is that the power of transferring them passes from the original shareholders to the company, and the company can then transfer the shares subject to the same rights and liabilities as if they had not been forfeited." Chitty, L.J., observed: "This is a sale of shares credited with so much paid up on them. It is not an issue of shares. It does not come within the principle of the prohibition against the issue of shares at a discount, and the transaction is not contrary to the principle of the Companies Act." Lindley, M.R., observed: "Why should not we look at the facts, and allow the company to treat these shares as shares on which something has been paid, and to give credit for the money which has been paid?"

21. These two decisions support the conclusion that neither a sale nor re-allotment and re-issue of forfeited shares can be said to be an allotment or issue of shares.

22. Mr. Maitra points out that in subsection (5) of section 75 the word "allotment" is used in the sense of re-allotment of forfeited shares. He contends that the same meaning must be given to the word "allotment" in subsection (1) of section 75. I am unable to accept this contention. The expression "allotment of its shares" in subsection (1) must be given its plain ordinary meaning. The expression means allotment of unissued shares in the share capital of the company. In sub-section (5) the expression "issue and allotment" is used somewhat loosely in the sense of re-issue and re-allotment of shares, already issued subsequently forfeited. The fact that the expression "issue and allotment" has been used loosely and inaccurately in sub-section (5) does not show that it is used inaccurately elsewhere. The wording of sub-section (5) does not justify alteration of the plain meaning of the word "allotment" in sub-section (1) of section 75. It must be remembered that sub-section (5) of section 75 of the Indian Companies Act, 1956 corresponds to sub-section (4) of section 104 of the Indian Companies Act, 1913. Sub-section (4) of section 104 did not find any place in section 104 when the Indian Companies Act, 1913 originally came into force. It was introduced in section 104 by the amending Act XXII of 1936. Section 104 of the Indian Companies Act, 1913 as amended by the amending Act XXII of 1936 has been re-enacted with certain modifications regarding bonus shares as section 75 of the Indian Companies Act, 1956. In these circumstances there is no justification for assuming that the word "allotment" has been used in the same sense in sub-sections (1) and (5) of section 75. We are satisfied that in sub-section (1) the word "allotment" means allotment of un-issued shares whereas in sub-section (5) it means re-allotment of shares which have already been issued and have subsequently been forfeited.

23. Mr. Maitra contends that upon forfeiture the shares must be deemed to be unissued shares. In support of this contention he relied upon *In re: Oceana Development Company, Limited*, (8) (1912) W.N. 121; *In re: Victoria (Malaya) Rubber Estates Limited*, (9) (1914) W.N. 307; Halsbury's Laws of England, 3rd Ed., Article 555, footnote (f) page 267; Palmer's Company Precedents, 16th Ed. part I, page 970 and Buckley on the Companies Act, 13th Ed. page 166. The two decisions relied upon establish that on a reduction of paid up share capital which has been lost and is not represented by available assets, under the provisions of the English Companies Acts corresponding to section 100(b) of the Indian Companies Act, 1956, the company may be allowed to treat the forfeited shares as if they were unissued and as if nothing is to be deemed to have been paid thereon; and the minute of reduction under the provisions of the English Companies Acts corresponding to section 103(b) (iv) of the Indian Companies Act, 1956 showing the amount, deemed to be paid up on each share, may be settled accordingly. By permitting the company to treat the shares as if nothing had been paid thereon, the company was in effect allowed to cancel the capital paid up thereon. Such cancellation is permissible u/s 100(b) of the Indian Companies Act, 1956. These decisions do not establish that the company is under an obligation to treat the forfeited shares as if they were being issued for

the first time. In case of reduction of capital the company may have the option to treat them as if they were unissued, but a shareholder cannot compel the company to so treat them. Besides on a sale or re-allotment of the shares under Article 27 of the Articles of Association the company has no power to treat them as if they were never issued.

24. Mr. Maitra next argues that the express exclusion by sub-section (5) of shares forfeited for non-payment of calls implies the inclusion in sub-section (1) of section 75 of shares forfeited on grounds other than non-payment of calls. He relies upon the maxim *expressio unius est exclusio alterius*. He also relies upon the observations of Harries, C.J., in *Calcutta Stock Exchange Association, Ltd, v. S.N. Nundy & Co.* (1) ILR (1950) 1 Cal. 235 at page 265 to the effect that presumably allotment of shares forfeited for causes other than nonpayment of calls would have to be included in the return of allotment u/s 104 of the Indian Companies Act, 1913. It appears to us that the learned Chief Justice did not express his considered opinion on the construction of that section. We consider ourselves entirely free to come to our own conclusions on the question of the construction of section 75 of the Indian Companies Act, 1956. The maxim *expressio unius est exclusio alterius* is an uncertain guide to the true meaning of a statute. It is neither sound common-sense nor sound law that an express exception should always be considered to be an implied inclusion of all other exceptions. Exceptions are often inserted *ex abundanti cautela*. It should be remembered that Table A refers to only one kind of forfeiture, namely, forfeiture for non-payment of calls. The two decisions of *Naresh Chandra Sanyal v. Ramani Kanto Roy*, 49 C.W.N. 502 , and *Calcutta Stock Exchange Association Ltd. v. S.N. Nundy & Co.*, (1) ILR (1950) 1 Cal 235, have now established that there can be forfeiture on grounds other than non-payment of calls. Previously the decision of *Eve, J. in Hopkinson v. Mortimer, Harley & Co., Limited*, (10) (1917) 1 Ch. 646, occupied the field and it was thought that there could be no forfeiture on grounds other than non-payment of calls. There is good ground for believing that sub-section (4) of section 104 of the Indian Companies Act, 1913 and the corresponding sub-section (5) of section 75 of the Indian Companies Act, 1956 are drafted on the assumption that the Companies Acts contemplate forfeiture of shares on the ground of non-payment of calls only and o(sic) no other ground. The express exclusion of allotment of shares forfeited for non-payment of calls does not lead to the inference that allotment of shares forfeited on other grounds are within the purview of sub-section (1) of section 75.

25. I have, therefore, come to the conclusion that neither a sale nor a re-allotment and re-issue of forfeited shares is an allotment of shares within the meaning of sub-section (1) of section 75. It follows that the respondent Association is not under an obligation to file a return of allotment in respect of the re-issue of the forfeited shares and P.B. Mukharji, J., rightly dismissed the application.

26. Before concluding this judgment, we must refer to certain aspects of

forfeiture dealt with by Chakravartti, J., in *Calcutta Stock Exchange Association Ltd. v. S.N. Nundy & Co.*, (1) ILR (1950) 1 Cal. 235. At pages 268 and 269 of the report Chakravartti, J., expressed the opinion that when a share of Rs. 10/-, on which Rs. 6/- has been paid, is forfeited, the subscribed capital is reduced by Rs. 10/-, though the sum of Rs. 6/- received on the forfeited share remains a part of the company's paid up capital. Harries, C.J., does not appear to have shared this opinion. At page 261 referring to the statutory balance-sheet in Table F of the Indian Companies Act, 1913, corresponding to Part I of Schedule VI of the Indian Companies Act, 1956. he observed that the forfeited share must be added to the subscribed capital. I am unable to concur in the opinion of Chakravartti, J. The subscribed capital is affected by the forfeiture of a partly paid up share of Rs. 10/- on which Rs. 6/- has been paid in the sense that on forfeiture and until sale or re-issue there is no member who can be compelled to pay the unpaid sum of Rs. 4/-. But the forfeiture does not reduce the subscribed capital. The reasons for this conclusion are as follows: -- (a) The subsequent sale of the forfeited share does not increase the subscribed capital. The purchaser does not subscribe for the shares; he buys them. The proceeds of sale do not represent share capital. If it be supposed that the forfeiture reduced the subscribed capital, it will remain reduced, even though the forfeited share is subsequently sold for Rs. 4/- or more and the sale proceeds are received by the company. The supposition can not be correct. After sale the share is owned by a member and the subscribed capital is what it was before forfeiture. There is neither a reduction of the subscribed capital by the forfeiture nor an increase of it by the subsequent sale, (b) It is admitted on all hands that in spite of forfeiture the amount paid up on the forfeited share remains part of the paid up capital. The paid up capital is part of the subscribed capital. As there is no reduction of the paid up capital of Rs. 6/- there is necessarily no reduction of the subscribed capital, at least to the extent of Rs. 6/-. (c) The form of annual return set out in Schedule V shows the forfeited shares as also the amount paid up thereon as part of the issued capital. Issued capital is necessarily subscribed capital. Schedule V, therefore, indicates that the subscribed capital is not wiped out by the forfeiture, (d) The statutory form of the balance-sheet set out in Schedule VI indicates that the amount paid up on the forfeited shares is to be added to the subscribed capital. The statutory form gives a case where the subscribed capital is fully paid up. Where the subscribed capital is partly paid up the balance-sheet usually shows the subscribed and paid up capital under separate headings and the forfeited shares under both those headings.

27. In *Calcutta Stock Exchange Association, Ltd., v. S.N. Nundy & Co.*, (1) ILR (1950) 1 Cal. 235 and 275 Chakravartti, J., also expressed the following opinion: -- "On the forfeited share being resold or re-allotted, at a premium or at par, an amount equal to the face value of the share will be credited from the proceeds to the paid-up capital account and the same amount, previously received on the share and held on the forfeited share account, will be transferred to the profits." Similar observations appear in the last paragraph of page 268. Harries, C.J., did

not express any opinion on this point. With great respect, I am unable to share the opinion so expressed by Chakravartti, J. The proceeds of sale or re-issue of forfeited shares are not received by the company as part of its capital. They represent the price of property at its disposal. Neither the forfeiture nor the subsequent sale or re-issue affects the paid up capital account. The paid up capital is not diminished by the forfeiture nor is it increased by the sale or re-issue. No part of the proceeds of the sale or re-issue is credited to the capital account. The entire proceeds should be credited in a special ear-marked account. Under Article 27 the company is under an obligation to apply the proceeds for satisfaction of the debts of the original subscriber and the proceeds must be applied accordingly. Where the company is under no obligation to apply the proceeds for any special purpose they may be treated as income and may then be transferred to the Revenue account. If the forfeited share v/as partly paid up at the time of forfeiture the unpaid capital may be called up on re-issue and when received may be credited to the paid up capital account. The sum paid up on the share before forfeiture remains in the paid up capital account. No part of this sum is taken out of the paid capital account or transferred to the profits account. It is necessary to advert to this point because the balance-sheet of the company for the year ending September 30, 1955. was obviously drawn up in the light of the opinion expressed by Chakravartti, J. The form of the balance-sheet has encouraged the appellant to contend that the re-issue of the forfeited shares is really the issue of new shares. The paid up capital in respect of the forfeited shares is Rs. 70,000/-. The balance-sheet has stated that this paid up capital of Rs. 70,000/- was received in respect of 70 forfeited shares issued as fully paid for cash consideration. Instead of making that statement the balance-sheet should have stated that the paid up capital of Rs. 70,000/- was received on 65 forfe(sic)ed shares originally issued as fully paid for consideration other than cash and on 5 forfeited shares originally issued as fully paid for cash consideration with a note that they have been subsequently reissued. The balance-sheet as it now stands gives the incorrect impression that the 70 forfeited shares have been issued for the total cash consideration of Rs. 70,000/-. This statement does not give a correct version of the original issue as 65 shares out of these 70 shares were originally issued for consideration other than cash. Nor does it give a correct version of the re-issue because the 70 shares were reissued for a total consideration of much more than Rs. 70,000/-.

28. In my opinion, there is no merit in this appeal. I propose that the following order be passed: --

29. The appeal be dismissed with costs. Certified for two Counsel.

Lahiri, C.J.

I agree.