

(1999) 10 P&H CK 0102

In the Punjab And Haryana At Chandigarh

Case No : Amended Civil Writ Petition No. 6768 of 1997

Universal Incast Ltd.

APPELLANT

Vs

Appellate Authority Securities and Exchange Board of India
(Sebi), Mumbai and others

RESPONDENT

Date of Decision : 15-10-1999

Acts Referred:

Companies Act, 1956 — Section 149, 69, 69(4), 73, 73(3)
Securities Contracts (Regulation) Act, 1956 — Section 22

Citation : (2002) 108 CompCas 248 : (2000) 125 PLR 256 : (2000) 2 RCR(Civil) 516

Hon'ble Judges : Iqbal Singh, J;G.S. Singhvi, J

Bench : Division Bench

Advocate : Harbhagwan Singh, J.S. Yadav and Ravinder Kumar, for the Appellant; O.P. Goyal and Ms. Anjali Kakkar, for the Respondent

Judgement

Iqbal Singh, J.—M/s. Universal Incast Ltd. (hereinafter referred to as the petitioner-company) made a public issue of 29.9 lakh equity shares. The issue opened on 12-2-1996 and closed on 22-2-1996. Basis of allotment was filed with the Stock Exchange on 25-3-1996 without taking into account the requests of withdrawals received from some applicants after closure of the issue. Ludhiana Stock Exchange (hereinafter referred to as "LSC") vide its letter dated 10-4-1996 wrote to the petitioner-company that the LSC was continuously receiving copies of letters addressed to the Registrar to the issue, by applicants for withdrawal of applications. The petitioner-company was, therefore, requested to take necessary advice from Securities and Exchange Board of India, Mumbai (hereinafter referred to as "SEBI") as to how these requests for withdrawals were to be disposed of. The petitioner-company approached the Northern Regional Officer of SEBI through the Lead Manager, but no reply came from SEBI. On 23-5-1996, LSC advised the petitioner-Company to refund the entire subscription amount as the shares were not listed on the expiry of 70 days of the closure of the issue i.e. 22-2-1996. The petitioner-company, however, did not do

so on the ground that they had excluded all withdrawal requests at the time of filing the basis of allotment with LSC. It was also stated by the petitioner-company that some more withdrawal requests were received, which were also excluded. After this further exclusion, subscription level fell below 100 per cent, but remained above 90 per cent. Since the issue did not remain over-subscribed, as was the case originally, therefore, the petitioner-company unilaterally finalised the allotment on 28-5-1996 and filed the returns of allotment with the Registrar of Companies, Punjab and Himachal Pradesh, Jalandhar. The case of the petitioner-company is that there was no need to consult LSC in finalising the basis of allotment as the residual subscription was between 90 and 100 per cent and that there was obligation upon the petitioner-company to consult LSC for finalising the basis of allotment only in the case of over-subscription. The petitioner-company then filed its listing application with LSC and the Delhi Stock Exchange (hereinafter referred to as "DSE"), as provided in the Prospectus of the petitioner-company dated 14-12-1995 (Annexure P-1). When LSC and DSE failed to approve the listing of shares of the petitioner-company as per its application, the petitioner-company went in appeal before the Appellate Authority, SEBI, u/s 22 of the Securities Contract (Regulation) Act, 1956 (hereinafter referred to as the "Act of 1956"). The Appellate Authority, after hearing the parties, vide its order dated 18-2-1997 (Annexure P-11) disposed of the appeal of the petitioner-company with the following directions which were to be complied with within 35 days from the date of order :-

"7.14(a) The company shall comply with the conditions stipulated by LSC in its letter dated 4-10-1996 (a copy of which is annexed to this order) as though the conditions stipulated by the Appellate Authority-SEBI. However, the conditions relating to approved basis of allotment are not applicable as it is stated that after taking into account the withdrawals the issue is not over-subscribed.

(b) The company shall issue refund order/payments, if that is not already done in respect of all the applicants who have already withdrawn their applications, some of them being (as per the records) (Shri/Smt.) Raj Rani Malhotra, Sushma Goel, Sadana Agarwal, Kumkum, Vinay, Dharamvir Saran, Shailaja, Sunil Gupta, Sandeep, Vinita Agarwal, Rajesh, Pradeep Basu, furnish evidence thereof to the LSC.

(c) the Company and the Bankers to the issue shall confirm in writing to LSE that the operation of the special account opened in terms of sub-section (3) of the Companies Act shall be in accordance with sub-section (3A) of Section 73 of the Companies Act, 1956 and that LSE shall be entitled to peruse the entries relating to the operation of the account, if and when required.

7.15. If LSE finds out that the company has complied with the formalities mentioned at para 7.14 above, LSE and DSE are directed to agree for listing of the shares of the company and this may be done within a period of 45 days from the date of receipt of this order.

8.0. This will be the last and final opportunity to the company which is managed by promoters of the first generation and with the adoption of this procedure, the company will either succeed due to force of its efforts or will fail on its own. It can no longer hold external agencies like LSE responsible for its failure, if it occurs. This opportunity is given keeping in view the interests of the investors, so they may get a fair deal. It is noted that pursuant to the order dated 16-8-1996 of SEBI, LSE did their best in this case and made a professional job."

2. It is the case of the petitioner-company that it complied with the directions contained in the aforesaid order dated 18-2-1997 (Annexure P-11) passed by the Appellate Authority and submitted the requisite documents with the LSC, but, the Appellate Authority issued an ex parte order dated 7-4-1997 (Annexure P-12) modifying its earlier order (Annexure P-11). The order (Annexure P-12), which is relevant in the context, reads as under :-

"3. The modification order is therefore passed pursuant to letters dated 3-4-1997 of that company and of the letter dated 4-4-1997 of Ludhiana Stock Exchange (LSE) to SEBI which was received on 7-4-1996, wherein, it has been stated that LSE has no objection for allowing extension of time of 15 days to the Company.

The monies however, will have to be deposited in the special account opened by UIL-Company with the bankers to the issue (State Bank of Patiala) only. From Vyasa Bank the funds will have to be transmitted to State Bank of Patiala. There should be actual transfer of funds and LSE will have to be satisfied, on this account. If the fund is deposited within 15 days, by the company from the date of receipt of the order, LSE should take a decision within 25 days regarding listing, if all other formalities as stipulated by LSE, are complied with."

3. It is further stated in the petition that the petitioner-company, thereafter moved the Appellate Authority-SEBI (respondent No. 1) by way of an application dated 21-4-1997 to reconsider its ex parte order dated 7-4-1997 and not to insist upon movement of funds to the State Bank of Patiala i.e. Banker to the Issue and to allow the petitioner-company to retain the funds in a Scheduled Bank and to allow listing of share of the petitioner-company. This application of the petitioner-company was rejected by the Appellate Authority and decision was communicated to it vide Annexure P-14 dated 24-4-1997.

4. When the petitioner-company failed to fulfil the required conditions, LSE rejected its application for listing of the equity shares on LSC vide its letter dated 5-5-1997 (Annexure P. 15).

5. This writ petition has been filed by the petitioner-company under Article 226 of the Constitution of India praying for issuance of a writ of certiorari quashing the order of Appellate Authority, SEBI, dated 18-2-1997 particularly to the extent where a direction has been given therein that the share application money received be kept in a separate account in the State Bank of Patiala instead of the scheduled Bank, namely Vyasa Bank. Further prayer made is for quashing the modification order dated 7-4-1997 issued by Appellate Authority-SEBI and the

letter dated 5-5-1997 issued by the LSC whereby the application for listing of the shares of the petitioner-company was rejected. Yet another prayer made is for issuance of a writ of mandamus directing respondents No. 2 and 3 to list the shares of the petitioner-company at their respective Exchanges maintained at Ludhiana and Delhi respectively.

6. In its written statement, respondent No. 1 took preliminary objection that disputed questions of fact arise in the writ petition and, therefore, it is not maintainable. Further, that the interest of the investors is paramount and it has to be kept at all times in view while dealing with a company by the SEBI and that the decision taken by respondent No. 1 is, therefore, proper and legal.

7. On merits, it has been averred that there is no, occasion for the petitioner Company to invoke the extraordinary jurisdiction of this Court since alternate remedy of appeal has already been availed of by it; that the petitioner-company could not have finalised the allotment of shares without the basis of allotment being finalised by LSC; that while imposing the conditions by the Appellate Authority-SEBI vide order dated 18-2-1997 (Annexure P11), principles of natural justice were duly observed and that the present writ petition has been filed by the petitioner-company in order to delay refunding of monies to the investors.

8. The respondent No. 2 (LSC), in its written statement, also raised the preliminary objection that in view of the disputed questions of facts being involved in the writ petition, the same is not maintainable. It was further pleaded that against the order dated 5-5-1997 whereby the application filed by the petitioner-company for listing, trading and dealing of its shares at the LSC was rejected, an appeal is maintainable before the SEBI; and that the petitioner-company has earlier filed appeal twice before the SEBI, therefore, there is no reason as to why it did not prefer an appeal before SEBI against the order dated 5-5-1997 passed by LSC.

9. On merits, it is admitted that application for approval of the basis of allotment was filed by the petitioner-company. However, it was denied that subscription of the issue was to the extent of 104 per cent. It was stated that subscription of the issue was to the extent of 79 per cent. It was further stated that the Stock Exchange was receiving numerous letters of withdrawal from the public even after the petitioner-company applied for approval of the basis of allotment of public issue. In fact, the petitioner-company has suppressed material facts. The petitioner-company could not have approved the basis of allotment since the subscription after the withdrawal of the applications fell down to the extent of 79 per cent. It has been further stated that it was necessary for the petitioner-company to publish the basis of allotment in two newspapers i.e. one in regional paper and the other a national paper and this requirement was not done. It was necessary for the petitioner-company to give instructions to the bankers for encashment of stock investments with respect to the accepted applications for shares. Respondent No. 1 further averred that since the petitioner-company did not act upon the guide-lines of SEBI for listing of shares, it had not approved the basis

of allotment and did not act upon expeditiously to complete the formalities. It has been further stated that the petitioner-company filed an application for listing on 11-6-1996 with the LIC after the expiry of the listing period, which expired on 2-5-1996. Necessary documents were also not filed by the petitioner-company along with the listing application. It is further stated that the petitioner-company was required to submit the confirmation by banks for realisation of the cheques/drafts and stock investments to show that the company had the minimum subscription, as required, with the banks before listing was granted. It was necessary so that the public money could not be misused. In respect of further security, the petitioner-company, through its Managing Director, undertook that in case any claim from the investor was received by LSC in terms of letter of indemnity, then the same security may be utilised for paying those claims. Certain mandatory requirements of listing were also not complied with.

10. It has been further stated that the petitioner-company opened an account on 12-12-1996 in Vyasa Bank with Rs. 5,000/-. It (petitioner-company) deposited all the money of stockinvest i.e. Rs. 59,93,000/-, by 18-12-1996. It furnished the certificate of the bank dated 18-12-1996, but withdrew almost the entire amount leaving behind about Rs. 5,000/- in the account on 19-12-1996. The statement of account of Vyasa Bank has been attached with the written statement as Annexure R-2/9. The money had to remain in the account till the approval of the listing was granted by the LSE. The petitioner-company played a trick and fraud by showing the amount standing in Vyasa Bank and then withdrawing the, same on the next day.

11. It has been further pleaded in the written statement that the LSC extended time for submission of the documents on the request of the petitioner-company, but it did not take any steps for fulfilling the conditions. The basis of allotment has not been approved by the LSE. When the petitioner-company, on its own showing, approved the basis of allotment, it was not necessary for it to ask for extension of time. Thus, the position of the petitioner-company is contradictory in its terms.

12. It has been further mentioned that the petitioner company was required to deposit all the monies received from the applicants with the Banker to the Issue and this amount should have been utilised only after approval of the listing. In case the listing was rejected, then the Banker to the Issue, as per the prospectus, had to refund the monies of the applicants. The Banker to the Issue in this case was the State Bank of Patiala. As such, in terms of the Prospectus, the petitioner-company was directed by the Appellate Authority to fulfil the statutory requirement of listing, which requirement has been violated by the petitioner-company; thereby jeopardising the interests of the investors. It was denied that it was due to the lapse on the part of LSE that the period of stockinvest expired.

13. We have heard Mr. Harbhagwan Singh, Senior Advocate, assisted by Mr. J. S. Yadav and Mr. Ravinder Kumar, Advocates, on behalf of the petitioner-company,

and Mr. O. P. Goyal, Senior Advocate, assisted by Ms. Anjali Kakkar, Advocate, on behalf of respondent No. 2 and have gone through the records of the case.

14. To recapitulate, the issue floated by the petitioner-company, opened on 12-2-1996 and closed on 22-2-1996. The listing period of equity shares was 70 days from the date the issue was opened i.e. 12-2-1996. As such, the listing period expired on 2-5-1996. The application for listing the shares was moved with the LSC by the petitioner-Company on 11-6-1996 i.e. after the expiry of listing period by more than one month. It is relevant to mention here that basis of allotment was filed by the petitioner-company with the Stock Exchange on 25-3-1996 without taking into account the requests of withdrawals received from various applicants after closure of the issue. On 23-5-1996, LSC advised the petitioner-company to refund the entire subscription amount as the shares were not listed on the expiry of 70 days of the closure of the issue i.e. 22-2-1996. As per the case of the plaintiff-company, since the issue did not remain over-subscribed, therefore, it unilaterally finalised the allotment on 28-5-1996. The monies received with the applications for allotment of shares were to be deposited in the special account to be opened by the petitioner-company with the Bankers to the issue i.e. State Bank of Patiala, only. However, the petitioner-company opened an account with a scheduled Bank i.e. Vyasa Bank on 12-12-1996 with Rs. 5,000/- and deposited all the money of stockinvest i.e. Rs. 59,93,000/- in this Bank by 18-12-1996. However, almost the entire amount was withdrawn by the petitioner company leaving behind only Rs. 4940/- in Vyasa Bank, as is depicted in the Statement issued by the Vyasa Bank (Annexure R-2/9) for the period from 1-1-1996 to 17-1-1997. The money had to remain in the account till the approval of the listing of shares was granted by the LSC. When the LSC did not approve the listing of shares of the petitioner-company as per request made by it in this regard, an appeal was filed before the Appellate Authority, SEBI by the petitioner-company which was disposed of vide order Annexure P-11 by directing the petitioner-company to comply with certain directions. Thereafter, pursuant to letters dated 3-4-1997 of the petitioner-company and of the LSC dated 4-4-1997 received by the Appellate Authority, the order dated 18-2-1997 (Annexure P-11) was modified by the Appellate Authority and order dated 7-4-1997 (Annexure P-12) was passed. In the latter order, it was specifically directed by the Appellate Authority to the petitioner-company that the monies received by it will have to be deposited in the special account with State Bank of Patiala i.e. Banker to the issue; that from Vyasa Bank the funds will have to be transmitted to State Bank of Patiala; and that there should be actual transfer of funds and LSE will have to be satisfied on this account. It was further directed that if the funds are deposited within 15 days with the State Bank of Patiala, LSE should take a decision within 25 days regarding listing, if all other formalities as stipulated by LSE are complied with. The petitioner-company again moved the Appellate Authority by way of application dated 21-4-1997 praying that it should be allowed to retain the funds in a Scheduled Bank instead of State Bank of Patiala. This application of the petitioner-company was rejected

and decision was communicated to it vide Annexure P-14.

15. The recapitulation of all the events makes it abundantly clear that the petitioner-company approached the Appellate Authority thrice and received orders Annexures P-11, P-12 and P-14. Vide orders Annexure P-11 and P-12, certain specific directions were issued by the Appellate Authority to the petitioner-company. Vide communication Annexure P-14, the Appellate Authority conveyed its rejection of the application of the petitioner-company whereby modification of the specific instruction contained in order Annexure P-12 that the petitioner-company should deposit the monies with State Bank of Patiala, was sought. When the petitioner-company did not comply with directions of the Appellate Authority and got an adverse order from the LSC regarding rejection of its application for listing of shares, the present writ petition has been filed instead of again approaching the Appellate Authority, apparently comprehending that violations of the orders of the Appellate Authority would go a long way in deciding the fate of its appeal before the Appellate Authority. The comprehension of the petitioner-company in this regard may be right, but the fact remains that the petitioner-company has not availed the remedy available to it i.e. by way of filing an appeal before the Appellate Authority against the order passed by the LSC.

16. The contention of the learned counsel for the petitioner-company is that once it had been shown to the LSC that the amount had been received by it (petitioner-company), though it was withdrawn subsequently i.e. before the permission of the listing of its shares was granted by the LSC, it cannot be said that the amount was shown to have been received only technically and listing of shares could not be granted by the LSC.

17. On the other hand, the contention of the learned counsel for respondent Nos. 1 and 2 is that the provisions of Section 69 read with Section 73 of the Companies Act (hereinafter referred to as "the Act") contemplate not merely that the amounts of application money tendered with the share applications should be deposited in a separate bank account with scheduled bank, but the same should be deposited in a separate bank account with the scheduled bank which is Banker to the issue and shall be kept deposited with the Banker to the issue till the fulfilment of purposes contemplated by sub-section (4) of Section 69 and sub-sections (3) and (3-A) of Section 73 of the Act. He has further argued that no doubt the provisions of sub-section (4) of Section 69 speak of monies being deposited in a Scheduled Bank and sub-sections (3) and (3-A) of Section 73 speak of monies being deposited in a separate bank account maintained with a Scheduled Bank, but the object and the mandatory nature of the provisions of Sections 69 and 73 while laying down the minimum subscription requirement and the other conditions for valid allotment is a condition precedent to valid allotment that the whole of the application money should have been paid to and actually received by the company.

18. In order to resolve the controversy, it is necessary to reproduce the relevant

provisions of Sections 69 and 73 of the Act, which are as under :-

Section 69, Prohibition of allotment unless minimum subscription received. -

(1) No allotment shall be made of any share capital of a company offered to the public for subscription, unless the amount stated in the prospectus as the minimum amount which, in the opinion of the Board of Directors, must be raised by the issue of share capital in order to provide for the matters specified in clause 5 of Schedule II has been subscribed, and the sum payable on application for the amount so stated has been paid to and received by the company, whether in cash or by a cheque or other instrument which has been paid.

(2) The amount so stated in the prospectus shall be reckoned exclusively of any amount payable otherwise than in money, and is in this Act referred to as "minimum subscription".

(3) The amount payable on application on each share shall not be less than five per cent of the nominal amount of the share.

(4) all monies received from applicants for shares shall be deposited and kept deposited in a Scheduled Bank -

(a) until the certificate to commence business is obtained u/s 149, or

(b) where such certificate has already been obtained, until the entire amount payable on applications for shares in respect of the minimum subscription has been received by the company, and where such amount has not been received by the company within the time on the expiry of which the monies received from the applicants for shares are required to be repaid without interest under sub-section (5), all monies received from applicants for shares shall be returned in accordance with the provisions of that sub-section.

In the event of any contravention of the provisions of this sub-section, every promoter, director or other person who is knowingly responsible for such contravention shall be punishable with fine which may extend to five thousand rupees.

(5) If the conditions aforesaid have not been complied with on the expiry of the hundred and twenty days after the first issue of the prospectus, all monies received from applicants for shares shall be forthwith repaid to them without interest; and if any such money is not so repaid within one hundred and thirty days after the issue of the prospectus, the directors of the company shall be jointly and severally liable to repay that money with interest at the rate of six per cent per annum from the expiry of the one hundred and thirtieth day :

Provided that a director shall not be so liable if he proves that the default in the repayment of the money was not due to any misconduct or negligence on his party.

(6) Any condition purporting to require or bind any applicant for shares to waive

compliance with any requirement of this section shall be void.

(7) This 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.

19. Section 73. Allotment of shares and debentures to be dealt in on stock exchange. - (1) Every company intending to offer shares or debentures to the public for subscription by the issue of a prospectus shall, before such issue, make an application to one or more recognised stock exchanges for permission for the shares or debentures intending to be so offered to be dealt with in the stock exchange or each such stock exchange.

20. (1-A) Where a prospectus, whether issued generally or not, states that an application under sub-section (1) has been made for permission for the shares or debentures offered thereby to be dealt in one or more recognized stock exchanges, such prospectus shall state the name of the stock exchange or, as the case may be, each such stock exchange, and any allotment made on an application in pursuance of such prospectus shall, whenever made, be void. If the permission has not been granted by the stock exchange or each such stock exchange, as the case may be, before the expiry of ten weeks from the date of the closing of the subscription lists :

Provided that where an appeal against the decision of any recognized stock exchange refusing permission for the shares or debentures to be dealt in on that stock exchange has been preferred u/s 22 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956), such allotment shall not be void until the dismissal of the appeal.

(2) Where the permission has not been applied under sub-section (1) or such permission having been applied for, has not been granted as aforesaid, the company shall forthwith repay without interest all monies received from applicants in pursuance of the prospectus, and, if any such money is not repaid within eight days after the company becomes liable to repay it, the company and every director of the company who is an officer in default shall, on and from the expiry of the eighth day, be jointly and severally liable to repay that money with interest at such rate, not less than four per cent and not more than fifteen per cent, as may be prescribed, having regard to the length of the period of delay in making the repayment of such money.

(2-A) xx xx xx xx xx. (2-B) xx xx xx xx xx. (3) All monies received as aforesaid shall be kept in a separate bank account maintained with a scheduled bank until the permission has been granted, or where an appeal has been preferred against the refusal to grant such permission, until the disposal of the appeal, and the money standing in such separate account shall, where the permission has not been applied for as aforesaid or has not been granted, be repaid within the time and in the manner specified in sub-section (2); and if default is made in complying with this sub-section, the company, and every

officer of the company who is in default, shall be punishable with fine which may extend to five thousand rupees.

(3-A). Monies standing to the credit of the separate bank account referred to in sub-section (3) shall not be utilised for any purpose other than the following purposes, namely :-

(a) adjustment against allotment of shares, where the shares have been permitted to be dealt in on the stock exchange or each stock exchange specified in the prospectus; or

(b) repayment of monies received from applicants in pursuance of the prospectus, where shares have not been permitted to be dealt in on the stock exchange or each stock exchange specified in the prospectus, as the case may be, or, where the company is for any other reason unable to make the allotment of share.

(4) Any condition purporting to require or bind any applicant for shares or debentures to waive compliance with any of the requirements of this section shall be void.

(5) xx xx xx xx xx."

21. A perusal of the facts of the case mentioned at great length above, rival contentions of the learned counsel for the parties and the provisions of Sections 69 and 73 of the Act, reproduced above, makes it abundantly clear that the action of the LSC in declining permission to the petitioner-company to deal with its shares in the Stock Exchange and the orders passed by the Appellate Authority, SEBI, on the appeals filed by the petitioner-company, were to afford protection to the investors by ensuring that a limited company is not able to incur commitments if it is grossly under-capitalised. It is not disputed that an amount of Rs. 59,93,000/- was deposited with the Vyasa Bank on 18-12-1996, but the entire amount leaving behind only Rs. 4,940/-, was withdrawn by the petitioner-company on 19-12-1996. Despite instructions from the Appellate Authority, SEBI that the funds should be transmitted to State Bank of Patiala from Vyasa Bank, State Bank of Patiala being Banker to the issue, the petitioner-company did not bother to do so. Under these circumstances, it cannot be said that the application money had been paid to or if received by the petitioner-company, had been kept intact. Had the same been received by the petitioner-company, there would have been no hitch on its part to deposit the same in a separate account to be opened in the State Bank of Patiala i.e. Banker to the issue, as had been directed by the Appellate Authority, SEBI.

22. The contention of the learned counsel for the petitioner-company that monies received from applicants for allotment of shares can be deposited in any Scheduled Bank, cannot be accepted. Such monies cannot be permitted to be deposited in the Bank of the choice of the Company because it will give the company an opportunity to resort to manipulations not to make the application

monies or a part thereof available to the company for the purpose for which monies are raised from the public. As per provisions of sub-section (3A) of Section 73 of the Act, monies received pursuant to the public offer of the shares can be utilized only for one of the two purposes i.e. for adjustment against allotment of shares and if listing permission is not received from the Stock Exchanges, for refunding the monies to the applicants. Listing permission cannot be granted by a Stock Exchange if the minimum subscription requirement as required by sub-section (1) to (3) of Section 69 of the Act is not complied with, as is in the present case. If the listing permission is not granted by even one Stock Exchange specified in the prospectus or where the company is for any reason unable to make allotment of shares, application monies received from the public have to be refunded within the time limit stipulated in the provisions of Section 73 of the Act. The scheme of Sections 69 and 73 of the Act would, therefore, suggest that the monies should not be allowed to be handled or manipulated by the company till all the mandatory requirements of Sections 69 and 73 of the Act are complied with and till the company can proceed to make valid allotment of shares. In other words the monies must be kept out of the reach of the company and its directors/promoters till the company can make allotment of shares in accordance with the law. This statutory object of the provisions of the Act will be frustrated if it is held that application monies received from the public are permitted to be deposited in any bank account of any scheduled bank where the company may choose to deposit. In that case, there will be no control on the company which may withdraw the application monies or any part thereof in flagrant violation of the provisions of Sections 69 and 73 of the Act and then agree to pay a fine of Rs. 5,000/- under Sections 69(4) and 73(3) of the Act. Therefore, no fault can be found with the impugned orders, which are quite in consonance with the provisions of sub-section (4) of Section 69 and sub-sections (3) and (3A) of Section 73 of the Act. The Appellate Authority had rightly directed the petitioner-company to deposit all monies received from applicants for shares offered to the public in the account to be opened with the Banker to the issue because it (Banker to the issue) holds the application monies in the nature of a trust fund which has been erected by the statute for the protection of persons who pay the money on the faith of a promise of refund, in case certain conditions are not fulfilled.

23. For the aforesaid reasons, we do not find any merit in this writ petition and the same is hereby dismissed.

24. Petition dismissed.