A

UNION OF INDIA

v.

ALLIED INTERNATIONAL PRODUCTS LTD. & ANR.

October 19, 1970

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[J. C. SHAH, K. S. HEGDE AND A. N. GROVER, JJ.]

Companies Act, 1956, *s.* 73—*Stock Exchange extending time for consideration of application for enlisting of shares within four weeks of closing of subscription list—Further intimation given to company within seven weeks that application was under consideration—Approval given after seven weeks—Whether approval valid—Approval by one of several* C *exchanges to which applications made whether valid and sufficient—Shareholder whether bound by allotment of shares if stock exchange convenient to him does not approve application.*

Code of Civil Procedure, O 41, *r.* 33— *High Court's discretion under—Principles for exercising.*

Interpretation of Statutes—S. 73(1) *of Companies Act*, 1956 *is a penal* D *provision and must be strictly construed.*

The first respondent—a limited company—issued a prospectus offering its shares to the public for subscription. It was mentioned in the prospectus that the company was applying to the Bombay, Calcutta and Delhi Stock Exchanges (which were recognised exchanges within the meaning of s. 2(39) of the Companies Act, 1956), for enlistment of its shares. On June 3, 1956 the Company submitted the applications. The subscription list was closed on June 21, 1965. On June 22, 1965 the Bombay E Exchange extended the time for consideration of the application till the expiry of seven weeks from the date of closing of the subscription list. On August 6, 1965 the Exchange informed the company that the application was receiving further consideration. On September 13, 1965 the Exchange informed the company that its application for enlisting its shares had been approved. The Calcutta and Delhi Exchanges rejected the applications made to them. The company challenged the orders F passed by the Calcutta and Delhi Exchanges in appeals to the Central Government under s. 22 of the Securities Contracts (Regulation) Act, 1956. The Central Government dismissed the appeals. The company filed writ petitions in the High Court. The Single Judge held that the grant of permission by the Bombay Exchange was valid and that allotment of shares did not become void merely because one out of the three exchanges alone, gave the permission to enlist the company's shares. He quashed the order of the Central Government and directed the issue of G *mandamus* to the Calcutta and Delhi Exchanges requiring them to enlist the shares of the company. The Union of India appealed to the Division Bench. The Calcutta and Delhi Exchanges acquiesced in the orders passed against them. The High Court confirmed the order of the Single Judge. With certificate, the Union of India appealed to this Court. The questions that fell for consideration were : (i) whether the permission granted by the Bombay Exchange after the expiry of seven weeks from the date of H closing of the subscription list violated the provisions of s. 73(1) of the Companies Act, 1956 and was on that account invalid; (ii) whether the grant of permission by one out of three Exchanges was sufficient to protect the allotment of shares from being invalid under s. 73(1) of the Companies Act, 1956; (iii) whether a shareholder who buys shares on the

representation that the shares would be enlisted in an Exchange convenient to him is bound by the allotment even when the condition of securing quotation in an Exchange convenient to him has not been carried out; (iv) Whether in the circumstances of the case the High Court ought in exercise of its power under O.41 r. 33 of the Code of Civil Procedure, to have vacated the writ of *Mandamus* requiring the Calcutta & Delhi Exchanges to grant permission for quotation of the Company's shares.

HELD : (i) It was not possible to accept the argument that permission for enlistment of shares can be given within the initial period of four weeks, or if time be extended, within seven weeks from the date of closing of the subscription list, and if permission be not granted by the Exchange within those seven weeks, the allotment becomes void, even if the Stock Exchanges intimates that it is giving further consideration to the application. [669 B]

The intendment of sub-ss. (1), (2) and (5) of s. 75 of the Companies Act, 1956 is plain. If within four weeks from the date of the closing of the subscription list, the stock exchange sends no intimation either extending time or notifying that the application "though not at present granted will be given further consideration", the application is deemed to be refused. If the Stock Exchange so desires it may intimate that the period is being extended to seven weeks. The Exchange may say nothing more during the extended period, in which case, on the expiry of the extended period the allotment becomes void. If however, within the four weeks, or within the extended period of seven weeks, the Exchange intimates that even though the application for permission is not at present granted, the application will be given further consideration the application is not deemed to be refused until it is finally granted. [669 C-D]

Being a penal provision s. 73(1) must be strictly construed. Unless the statute in clear terms so provides, when the Exchange intimates its desire to consider the application further, an inference that the Exchange has still rejected the application cannot be made. [669 F]

The amendment made by Act 31 of 1965 in sub-s. (5) by the substitution of the expression "permission shall not be deemed to be refused" by the expression "it shall not be deemed that permission has been granted" also gives a clue to the legislative intention that the inference of refusal shall not be made if the Exchange has intimated to the applicant that further consideration will be given to the application. [668 H]

(ii) It cannot be held that unless all the applications to different Exchanges were granted, the allotment of shares must, by virtue of sub-s. (1) of s. 73 be invalid. The object of s. 73(1) is that the subscribers to the shares must have facility to approach on Exchange for having their holding converted whenever they desire. Even if out of several exchanges approached, one or more, but not all, have granted the application for enlistment, the facility of ensuring quick conversion is still available. It after representing in the prospectus that an application has been made to a recognised exchange for "enlistment" or will be made within the prescribed period, the company is unable to obtain permission for "enlistment" from any Exchange, the allotment will be invalid. But sub-s. (1) is not intended to mean that it will be invalid even if permission is obtained but not from all the Exchanges to which applications have been made. [670 A-C]

(iii) Section 73(1) declares the entire allotment void : it does not take into consideration the right or convenience of individual shareholders.

A An enquiry whether a shareholder or a class of shareholders was or were induced to subscribe for shares on the representation that the company was applying for enlistment to several exchanges one of which was convenient to him, is irrelevant in determining whether the allotment is rendered invalid for failure to secure compliance with a statutory condition. [671 B]

B (iv) An appellate court may in appropriate case pass any decree and make any order appropriate to the ends of justice, even if a party has not appealed against an adverse decision. The power may be exercised by the Court notwithstanding that the appeal is as to a part only of the decree and may be exercised in favour of all or any of the parties, even though they may not have filed an appeal or objection. [671 E]

C [The Court did not give a final opinion on the question whether in the present case the discretion was correctly exercised by the High Court because the Calcutta and Delhi Exchanges had applied for certificates in the High Court of Delhi and the application was pending.] [671 G]

CIVIL APPELLATE JURISDICTION: Civil Appeals Nos. 1772 and 1773 of 1970.

D Appeals from the judgment and order dated July 24, 1970, of the Delhi High Court in Letters Patent Appeals Nos. 72 and 73 of 1969.

C. K. Daphtary, S. P. Nayar, for the appellant (in both the appeals).

E *N. A. Palkhivala, Santosh Chatterjee, G. S. Chatterjee* and *A. M. Parikh,* for respondent No. 1 (in both the appeals).

B. N. Kirpal and *Bishamber Lal,* for respondent No. 2 (in C.A. No. 1772 of 1970).

B. Sen and *O. P. Khaitan,* for respondent No. 2 (in C.A. No. F 1773 of 1970).

N. A. Palkhivala, Bhuvanesh Kumari, Santosh Chatterjee, J. B. Dadachanji, for intervener No. 1.

M. C. Setalvad, Santosh Chatterjee, C. M. Oberoi and *J. B. Dadachanji,* for intervener No. 2.

G *C. K. Daphtary* and *I. N. Shroff,* for intervener No. 3.

A. N. Sinha and *Rathin Das,* for intervener No. 4.

C. K. Daphtary and *S. K. Dholakia,* for intervener No. 5.

The Judgment of the Court was delivered by—

H **Shah, J.** On May 29, 1965, the Allied International Products Ltd.—hereinafter called 'the Company—issued a prospectus offering to the public for subscription 5,00,000 equity shares

of Rs. 10 each and 10,000 cumulative preference shares of Rs. 100 each, and intimating that "applications are being made to "Bombay, Calcutta and Delhi Stock Exchanges for permission to deal in for official quotations of the shares of the Company". A

On June 3, 1965, the Company submitted applications to the Stock Exchanges at Bombay, Calcutta and Delhi (which are recognised Stock Exchanges within the meaning of s. 2(39) of the Companies Act, 1956), for "enlisting" its shares. The subscription list of the Company was closed on June 21, 1965. On June 22, 1965, the Bombay Stock Exchange extended the time for consideration of the application till the expiry of seven weeks from the date of closing of the subscription list and requested the Company to furnish certain particulars to facilitate compliance with s. 73 of the Indian Companies Act, 1956. On August 6, 1965, the Exchange informed the Company that the application was receiving further consideration and requested that certain formalities be complied with. On September 13. 1965. the Exchange informed the Company that it had considered and approved the application for "enlisting" its shares. B C D

On June 9, 1965, the Calcutta Stock Exchange called upon the Company to modify certain Articles of Association, and by letter dated July 12, 1965, asked for particulars in respect of specified matters. On July 27, 1965, the Calcutta Stock Exchange granted time for compliance till the end of the seventh week from the date of the closing of the subscription list. On November 5, 1965, the Calcutta Stock Exchange rejected the application of the Company for "enlisting" the shares. E

The Delhi Stock Exchange informed the Company on July 10, 1965, that in order to facilitate compliance with the provisions of s. 73 of the Companies Act, "the allotment of shares should be finalised as soon as possible in consultation with the Stock Exchange". By another letter dated August 9, 1965, the Exchange informed the Company that the matter of "enlistment" of shares was under consideration, and the Company will be intimated of the decision of the Exchange as soon as it is taken. The Delhi Stock Exchange by letter dated December 4, 1965, rejected the application of the Company for "enlistment" of its shares. F G

The Company challenged the orders passed by the Calcutta and Delhi Stock Exchanges rejecting the applications for "enlistment", in separate appeals under s. 22 of the Securities Contracts (Regulations) Act 42 of 1956. The Central Government dismissed the appeals. In the orders recording dismissal it was recited that the Exchange did not grant the permission for the shares H

A to be "enlisted" before the expiry of four weeks from the date of closing of the subscription list as required by s. 73(1) of the Companies Act, 1956, and that the Exchange did not notify any extension of time for the grant of the permission within four weeks.

The Company then moved petitions in the High Court of Delhi
B for the issue of writs quashing the orders passed by the Central Government in appeals under s. 22 of the Securities Contracts (Regulation) Act, and the orders of the Stock Exchanges rejecting the application of the Company as "void, illegal and of no effect", and for orders directing the Stock Exchanges to "grant enlistment" of the shares of the Company, and further declaring
C s. 22 of the Securities Contracts (Regulation) Act 42 of 1956, and s. 73 of the Companies Act, 1956, *ultra vires* the Constitution of India.

Rangarajan, J., was of the opinion that grant of permission by the Bombay Stock Exchange was valid, and that allotment of shares did not become void, merely because one out of the three
D Exchanges alone gave the permission to "enlist" the Company's shares. The learned Judge quashed the order of the Central Government and directed that writs of *mandamus* do issue against the Calcutta and Delhi Stock Exchanges requiring them to "enlist" the shares of the Company.

E Against the decision of Rangarajan, J., the Union of India appealed to a Division Bench of the High Court of Delhi. The two Exchanges acquiesced in the orders passed against them. The High Court confirmed the orders of Rangarajan, J. With certificate granted by the High Court, the Union of India has appealed to this Court.

F In support of these appeals, two principal contentions were urged on behalf of the Union :

(1) The permission granted by the Bombay Stock Exchange after the expiry of seven weeks violated the provisions of s. 73(1) of the Companies Act, 1956 and was on that account invalid; and

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(2) that grant of permission by one out of the three Exchanges did not protect the allotment of shares from being invalid under s. 73(1) of the Companies Act, 1956.

The two Stock Exchanges which had acquiesced in the judgment
H of the Rangarajan, J., urged that the order granting writs of *mandamus* requiring the two Exchanges to "enlist" the shares of the Company was without jurisdiction. Rangarajan, J., it was

said, could only direct that the applications be considered by the two Exchanges. A

The relevant provisions of s. 73 of the Companies Act, 1956, in force at the date of the applications for permission for the shares to be dealt in the Exchanges provided :

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"(1) Where a prospectus, whether issued generally or not, states that application has been made or will be made for permission for the shares or debentures offered thereby to be dealt in on a recognised stock exchange, any allotment made on an application in pursuance of the prospectus shall, whenever made, be void, if the permission has not been applied for before the tenth day after the first issue of the prospectus, or, if the permission has not been granted before the expiry of four weeks from the date of the closing of the subscription lists or such longer period not exceeding seven weeks as may, within the said four weeks be notified to the applicant for permission by or on behalf of the Stock Exchange. C D

(2) Where the permission has not been applied for as aforesaid, or has not been granted as aforesaid, the company shall forthwith repay without interest all moneys 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 directors of the company shall be jointly and severally liable to repay that money with interest at the rate of five per cent per annum from the expiry of the eighth day : E

Provided F

(5) For the purpose of this section permission shall not be deemed to be refused, if it is intimated that the application for permission though not at present granted, will be given further consideration. G

(7) No prospectus shall state that application has been made for permission for the shares or debentures offered thereby to be dealt in on any stock exchange. unless it is a recognised stock exchange." H

By the Securities Contracts (Regulation) Act, machinery is set up for extending recognition to and for withdrawal of recognition to Stock Exchanges and for other incidental matters such as the making of rules and bye-laws of the Exchanges and appeals against the orders of recognised Exchanges. By s. 22 of the Act it is provided :

> "Where a recognised stock exchange acting in pursuance of any power given to it by its bye-laws, refuses to list the securities of any public company, the company shall be entitled to be furnished with the reason for such refusal, and may appeal against the decision of the recognised stock exchange to the Central Government, and the Central Government, may after giving the stock exchange an opportunity of being heard, vary or set aside the decision of the recognised stock exchange and when it does so the stock exchange shall be bound to act in conformity with the orders of the Central Government."

Sub-section (5) of s. 73 of the Companies Act, 1956, is intended to be explanatory of sub-ss. (1) & (2) of s. 73. Before that sub-section was amended by Act 31 of 1965 different phraseology was used in sub-ss. (1) & (2) and in sub-s. (5) : the former used the expression "permission has not been granted", whereas sub-s. (5) used the expression "permission shall not be deemed to be refused". The expression "permission has not been granted" is ambiguous : it may mean "permission has been refused" : it may also mean that the application for permission is under consideration and has not been disposed of. Spb-sections (1) & (2) of s. 73 were borrowed from s. 51 of the English Companies Act, 1948 with slight modifications. But the draftsman of the Indian Act, for reasons which it is difficult to appreciate, substituted the expression "permission has not been granted" for the expression "permission has been refused". In enacting sub-s. (5) of s. 73 the words used in sub-s. (5) of s. 51 of the English Act, viz. "permission shall not be deemed to be refused" were adopted. In our judgment, the expression "permission has not been granted" in sub-ss. (1) & (2) was intended in the context in which it occurs and in the light of the object of the enactment, to mean "permission has been refused".

A Stock Exchange fulfils a vital function in the economic development of a nation : its main function is to "liquify capital by enabling a person who has invested money in say a factory or a railway to convert it into cash by disposing of his share in the enterprize to some one else". Investment in joint stock companies is attractive to the public, because the value of the shares is announced day after day in the Stock Exchanges, and the shares

quoted on the Exchanges are capable of almost immediate conversion into money. In modern days a company stands little chance of inducing the public to subscribe to its capital, unless its shares are quoted in an approved Stock Exchange. All public companies are anxious to obtain permission from reputed exchanges for securing quotations of their shares and the management of a company is anxious to inform the investing public that the shares of the company will be quoted on the Stock exchange. To prevent malpractices, the Parliament enacted legislation which aimed at securing control over the proper functioning of the Stock Exchanges, and also placed stringent restrictions upon the representations made by the companies in issuing prospectus inviting subscriptions. The Parliament enacted the Securities Contracts (Regulation) Act 42 of 1956, and simultaneously made provision in s. 73 of the Companies Act, 1956, for ensuring that representations made in the prospectus are carried out and fluidity of the investment by the holder of stock is ensured by procuring permission for quotation of shares in a recognized stock exchange.

Under sub-s. (1) of s. 73 an application for permission to secure quotation, if not previously made, shall be made before the tenth day after the first issue of the prospectus, and if the application is not so made, the allotment is void. Again if the Exchange rejects the application within four weeks, or within seven weeks after extending the time, the allotment will be void, unless within that period the Exchange has informed the Company that further consideration will be given to the application. It is however not enacted in s. 73(1) that if the application is not granted within the time prescribed, it cannot be granted after the expiry of the prescribed period, even if the Exchange has intimated that it will give further consideration to the application. Sub-section (5) contains a clear implication to the contrary. If the Exchange has intimated within the period prescribed by sub-s. (1) that the application will be given further consideration, it is not to be deemed that the application is refused. The Exchange is not obliged to give any intimation relating to the consideration of the application before the last day of the prescribed period. If no intimation is given till the last date of the prescribed period, no inference of refusal follows. It would then be difficult to hold that if the Exchange intimates that it is considering the application or intends to give further consideration to the application that such an inference may follow. The amendment made by Act 31 of 1965 in sub-s. (5) by the substitution of the expression "permission shall not be deemed to be refused" by the expression "it shall not be deemed that permission has not been granted" also gives a clue to the legislative intention that the inference of refusal will not be made if the

A Exchange has intimated to the applicant that further consideration will be given to the application.

We are unable to hold that permission for "enlistment" of shares can be given within the initial four weeks or if time be extended within seven weeks from the date of the closing of the B subscription list, and if permission be not granted by the Exchange within those seven weeks, the allotment becomes void, even if the Stock Exchange intimates that it is giving further consideration to the application. The intendment of sub-ss. (1), (2) & (5) is plain. If within four weeks from the date of the closing of the subscription list, the Stock Exchange sends no intimation either extending the time or notifying that the application "though C not at present granted will be given further consideration," the application is deemed to be refused. If the Stock Exchange so desires it may intimate that the period is being extended to seven weeks. The Exchange may say nothing more within the extended period, in which case, on the expiry of the extended period the allotment becomes void. If, however, within the four weeks, or D within the extended period of seven weeks, the Exchange intimates that even though the application for permission is not at present granted, the application will be given further consideration, the application is not deemed to be refused until it is finally decided.

The application for allotment of shares and acceptance there- E of constitute a contract between the Company and the applicant. Section 73(1) of the Companies Act imposes a penalty whereby the allotment of shares becomes void on the happening of the contingency specified therein. The imposition of penalty depends upon the violation of the Exchange and when imposed operates to invalidate all contracts resulting from allotment of shares bet- F ween the applicants for shares and the Company. Such a provision must be strictly construed. Unless the statute in clear terms so provides, when the Exchange intimates its desire to consider the application further, an inference that the Exchange has still rejected the application, cannot be made.

It is true that in the prospectus issued by the Company it was G intimated that applications are being made to the Bombay, Calcutta and Delhi Stock Exchanges for permission for official quotations of the shares of the Company. It is not contended, and it cannot reasonably be contended, that only one application for permission to secure quotation of the shares in an approved Exchange may be made. The expression "a recognised stock ex- H change" means "any recognised exchange". More applications than one for quotation of shares may therefore be made. In the present case, three applications were submitted on June 3, 1965. Two of these applications were rejected and one was granted. We

are unable to hold that unless all the applications were granted, the allotment of shares must, by virtue of sub-s. (1) of s. 73, be invalid. The object of s. 73(1) is that the subscribers to the shares must have facility to approach an Exchange for having their holdings converted whenever they desire. Even if out of several Exchanges approached, one or more, but not all, have granted the application for "enlistment", the facility of ensuring quick conversion is still available. If after representing in the prospectus that an application has been made to a recognised exchange for "enlistment" or will be made within the prescribed period, the Company is unable to obtain permission for "enlistment" from any exchange, the allotment will be invalid. But sub-s. (1) is not intended to mean that it will be invalid, even if permission is obtained, but not from all the Exchanges to which applications have been made.

Section 73(1) is enacted with the object that the subscribers will be ensured the facility of easy convertibility of their holdings when they have subscribed to the shares on the representation in the prospectus that an application for quotation of shares has been or will be made. The allotment of shares will be invalid only when permission for quotation is not obtained. When permission from one or more of the Exchanges is obtained, it carries out the object of the Act. It will be a mechanical interpretation wholly divorced from the true object and intendment of the Act to hold that even if permission is secured for quotation of shares in an Exchange, the allotment will be invalid because another exchange has not granted the permission. That this is the true meaning of s. 73(1) is clear from the fact that the penalty of avoidance of allotment of shares is attracted not only where the permission applied for has not been granted, but where no application has been made within the prescribed period. If applications are made to several exchanges, some within the period of ten days after the first issue of the prospectus, and some beyond, or that one or more applications, but not all, is or are defective, and the error is not rectified, it would be unreasonable to hold that because some of the applications made beyond the tenth day after the first issue of the prospectus, or are defective, are liable to be rejected, the applications properly made before some of the Exchanges are also ineffective and the allotment made may be invalid.

Counsel for the Calcutta Stock Exchange urged that where a person is induced to subscribe for shares relying upon a representation that an application is made or intended to be made for quotation of the shares in an Exchange near his home-town, and it is found that the application is not made or if made it is rejected by the Exchange, it would be a great hardship to the

A shareholder if he is bound by the allotment, even if the condition of securing quotation in the Exchange convenient to him is not carried out. But s. 73(1) declares the entire allotment void : it does not take into consideration the right or convenience of individual shareholders. An enquiry whether a shareholder or a class of share-holders was or were induced to subscribe for B shares on the representation is irrelevant in determining whether the allotment is for failure to secure compliance with a statutory condition rendered invalid. We need not consider whether the individual shareholder who finds that an Exchange convenient to him has not listed the shares furnishes a cause of action to him for avoiding the contract.

C We are in the view we have taken not called upon to decide whether the provisions of s. 73 of the Companies Act, 1956, are *ultra vires,* nor do we consider it necessary to decide whether s. 22 of the Securities Contracts (Regulation) Act, 1956, is *ultra vires.*

It was urged on behalf of the Delhi and Calcutta Stock Ex- D changes that the High Court ought, in exercise of the power under O. 41 r. 33 of the Code of Civil Procedure, to have vacated the writ of *mandamus* issued requiring them to grant permission for quotation of the Company's shares. An Appellate Court may in appropriate case pass any decree and make any order appropriate to the ends of justice, even if a party has not appealed E against an adverse decision. That power may be exercised by the Court notwithstanding that the appeal is as to a part only of the decree and may be exercised in favour of all or any of the parties, even though they may not have filed any appeal or objection. But the jurisdiction is discretionary and the High Court has not exercised it apparently for good reasons. The order passed against the Union and the two Exchanges were in substance dis- F tinct. Against the Union the order was made quashing its order in appeal against the orders of the Exchanges; and against the Exchanges the order was made directing inclusion of the shares in the list of quoted shares. The Exchanges acquiesced in the direction.

We need, however, not express any final opinion in this G question. We are informed at the Bar that the Calcutta Stock Exchange has applied for certificate to the High Court of Delhi and that application is pending. We need not pre-judge the result of that application or the appeal, if any, which may be filed in this Court.

The appeals fail and are dismissed with costs. There will be H one hearing fee in favour of the Company. The other parties will bear their own costs.

G.C. *Appeals dismissed.*