

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) No. 289 of 2017

IN THE MATTER OF:

**1. Sri Lakshmi Prasanna Agro Paper
Industries Ltd.
3-173/4, Industrial Road
Polamuru Anaparthi Mandal,
E.G. District,
Andhra Pradesh- 533342**

....Appellants

**(Original Respondent
No. 1)**

**2. Brahmananda Reddy Medapati
2-46, Polamuru, Anaparthi-533342
Andhra Pradesh**

**(Original Respondent
No. 2)**

**3. Naga Surya Prabhavathi Medapati
R/o 7-31 Golla Reddy Vari Veedhi
Anaparthi-533342
Andhra Pradesh**

**(Original Respondent
No. 3)**

**4. Venkat Reddy Karri
R/o 2048, polamuru
Anaparthi-533342
Andhra Pradesh**

**(Original Respondent
No. 4)**

Vs

**1. Chavali Gayatri Praveen & Anr.
R/o. 401, Meenakshi Heights
A.V. Apparo Road, E.G. District
Andhra Pradesh**

....Respondents

**(Original Petitioner
No. 1)**

**2. Chavali Venkata Padma
R/o. 401, Meenakshi Heiths
A.V. Apparo Road, E.G. District
Andhra Pradesh**

**(Original Petitioner
No. 2)**

Present:

**For Appellants: Mr. M. Srinivas R. Rao, Mr. Abid Ali Beeran and Mr.
Arun Devdas, Advocates.**

For Respondents: None.

ORDER

07.12.2017: Heard learned counsel for appellants. In this matter the respondents filed CP No. 20/75/HDB/2016 before National Company Law Tribunal, Hyderabad Bench, Hyderabad (NCLT in Short) claiming that they had on the request of the original Respondent No. 2 lent money for the business of the company. It is claimed that the petitioners advanced money to the extent of Rs. 8,40,000/- as deposit for 3 years. Petitioners no. 1 claimed to have paid Rs.3.50 lakhs on 29.03.2007 and Rs. 1.40 lakhs in May 2007, and Petitioner no. 2 paid Rs.3.50 lakhs on 29.03.2007. They relied on certain receipts which had been issued as acknowledging the receipt of the deposit. The respondents claimed that the receipts were subsequently extended by them vide letter dated 15.03.2010 and the receipts matured in 2013. The case put up is that when they claimed return of their money with interest the original respondents claimed that they had been issued shares against the amounts received. The original petitioners claimed that they had never asked for shares and thus their money should be returned with interest.

2. The learned NCLT heard both the sides and after going through the record found that the company had not denied receipt of the money in question. Although the company claimed it was towards issue of shares it failed to show any document to show proper allotment of shares in question except saying that relevant information was filed with the Registrar of Companies. Against this the original petitioners had shown money receipts in their favour. The learned NCLT

was of the view that the company was required to produce all relevant records to show that the money was paid for allotment of shares. It observed in Para 16 and 17 of the impugned judgment as under:

16. The Respondents even failed to file of Memorandum and Articles of Association and minutes/proceedings passed by the Board of Directors confirming that the Petitioners have deposited the amounts in question only for the purpose of allotting shares. The respondents have miserably failed to submit any piece of evidence to show that petitioners have made any request for allotment of shares while accepting that the money in question was received by them. In the absence of application for allotment of shares in question by the petitioners, the impugned allotment of shares to the petitioners are liable to be set aside and in the result , the money should be deemed to be fixed deposit with interest thereon made with the Company. And impugned allotment is not legally tenable.

17. The Respondents have also failed to produce any Board resolution authorizing the allotment of shares of the petitioners, Annual returns filed with the Registrar of Companies, including the names of the Petitioners, any dividend paid to the petitioners so far, the names of the Petitioners having entered in the register of members maintained by the Company etc.

Subsequently the learned NCLT passed orders directing company to return the money with interest.

3. Against these orders present appeal is filed.

4. On 26.10.2017 when this matter had come up we had passed the following order:

“ Heard the learned counsel for the appellant. For the purpose of showing that the shares were allotted to the respondents, learned counsel refers to a document Form-2 at Page 82 of the Paper Book and the chart at Page 85- Entry Nos. 10 and 20. He says that this allotment was later on superseded in 2008 by another Form-2, which is at Page 88 and the chart is at Page 92. According to him, the reason for this was that in the year 2007, the allotment was made to 61 parties, which the Company could not have done and so the rectification was done in 2008 showing allotment to 49 people.

Learned counsel for the appellant says that these Form-2 were submitted to the Registrar of Companies. Learned Counsel is unable to show from record the date of submission and proof of submission of these forms to the Registrar of Companies. Learned counsel seeks time to file relevant documents and one week's time is sought. Time is granted for this purpose.

The appellant will have also to show that for the irregular allotments, whether the Company paid any penalty and if the same was regularized by the Registrar of Companies.

List the matter on 21st November, 2017.”

5. Subsequently the learned counsel for the appellants has filed certified copies of documents Form-2 dated 29.12.2007, Form-2 dated 31.03.2008. However, the important point which we had raised was for the appellants to show the date of submission of these forms and proof of submission. The documents filed may be relating to 2007 and 2008 but the date exactly when they were actually filed with the Registrar of Companies has not been shown in spite of opportunities given. In the circumstances, we are not able to find that there is any error in the impugned judgment which has been passed. The company is unable to show any share application on the part of original petitioners official records over the years of such shareholding by petitioners or conferring of any benefits to the shareholders. Looking to the impugned judgment, no interference is called for.

6. The appeal is dismissed without admitting the same. No order as to costs.

(Justice A.I.S. Cheema)
Member (Judicial)

(Balvinder Singh)
Member (Technical)

sh/nn