

In Re: Asiatic Oxygen Ltd.

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Court : Kolkata

Decided On : Jun-16-1971

Reported in : AIR1972Cal50

Judge : Ghose, J.

Acts : [Companies Act, 1956](#) - Section 113(1)

Appeal No. : Company Application No. 267 of 1970

Appellant : In Re: Asiatic Oxygen Ltd.

Disposition : Application dismissed

Judgement :

ORDER

Ghose, J.

1. This application has been made by Raigarh Trading Co. Ltd. against Asiatic Oxygen Ltd. & ors., for inter alia, delivery of 28,500 equity shares of Rs. 10/- each in the respondent Asiatic Oxygen Ltd. (hereinafter referred to as the Company) belonging to the petitioner; in the alternative for issue of duplicate certificates for the aforesaid 28,500 equity shares of Rupees 10/- each and delivery thereof to the applicant. This application has been made, on a Judge's Summons dated 8th October, 1969 under Section 113 of the [Companies Act, 1956](#).

2. In this application Surajmal Nagarmal, a partnership firm was given liberty to intervene. The said firm has also filed Affidavit. There is no dispute before me that Raigarh Trading Co. Ltd., the applicant is the registered holder of the said 28,500 equity shares of Rupees 10/- each in the Company. The only dispute before me is as to whether the Company delivered the said shares to the Petitioner. The Company alleges that the Company duly delivered the said shares to one Dinesh Chandra Sarkar representing the applicant, who in his turn delivered the said shares to M/s. Surajmal Nagarmal through Biswanath Deora as and by way of pledge for the due repayment of loans granted by. Surajmal Nagarmal to the Petitioner. On the nature of affidavit evidence it is difficult to come to any conclusion as to whether the company delivered the said shares to the applicant represented by the said Dinesh Chandra Sarkar who hi its turn pledged the same with Surajmal Nagarmal. For deciding the said fact this application has to be tried in evidence.

3. But, in my opinion, it is not necessary- for me to try this application on evidence inasmuch as I am of the opinion that an application for delivery of shares under Section 113 of the [Companies Act, 1956](#) does not lie. For that the [Companies Act, 1956](#) provides for no special remedy. A suit has to be filed for that.

Section 113 of the Companies Act reads as follows :--

'(1) Every company , shall, within three months after the allotment of any of its shares, debentures or debenturestock, and within two months after the application for the registration of the transfer of any such shares, debentures or debenture stock, complete and have ready for delivery the certificate, of all shares, the debentures, and the certificates of all debenture stock allotted or transfered, unless the conditions of issue of the shares, debentures or debenture stock otherwise provide.

The expression . 'transfer' for the purpose of this sub-section, means a transfer duly stamped and otherwise valid, and does not include any transfer which the company is for any reason entitled to refuse to register and does not register.

(2) If default is made in complying with Sub-section (1), the company, and 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.

(3) If any company on which a notice has been served requiring it to make good any default in complying with the provisions of Sub-section (1), fails to make good the default within ten days after the service of the notice, the Court may, on the application of the person entitled to have the certificate or the debentures delivered to him, make an order directing the company and any officer of the company to make good the default within such time as may be specified in the order; and any such order may provide that all costs of and incidental to the application shall be borne by the company or by any 'officer of the company responsible for the default'

4. Sub-section (1) of the said Section imposes an obligation upon the company to have ready for delivery the certificates of all shares etc. within three months after the allotment of such shares or debentures or debenture stock or within two months after application for the registration of transfer of any such shares, debentures or debenture stock in the absence of any conditions of issue of the shares, debentures or debenture stock to the contrary. Sub-section (2) of the said Section provides for levy of fine up to the limit of Rupees 500/- per day for the period during which the company fails to comply with the provisions of Sub-section (1) upon the company and every officer of the company. Sub-section (3) of the said Section authorises 'the person entitled to have the certificates or the debentures delivered to him to apply to Court on the failure of the Company to make good the default mentioned in Sub-section (1) within 10 days after the service of a notice upon the company requiring the company to comply with the provisions of Sub-section (1) of the said Section and make good the default in regard thereto. Upon such application the Court under Sub-section (3) is empowered to make an order directing the company or any officer of the company to make good the default within the time mentioned in the order.

5. Section 113 of the [Companies Act, 1956](#) is in identical terms as Section 80 of the English Companies Act of 1948. Rule 7 of the Rules of the Supreme Court

(Companies) (No. 2) 1948 of England enumerates the applications which shall be made by motion. Rule 8 of the said Rules enumerates the applications which have to be made by summons. Sub-rule (i) of Rule 8 of the said Rules enumerates applications in regard to delivery of certificates or debentures under Section 80 (3) of the Act. Rule 11 (a) of our Companies (Court) Rules, 1959 sets out the applications which shall be made by petition. Rule 11 (b) of our Rules provides that all other applications under the Act or under the said Rules have to be made by a Judge's summons in the manner provided in the Rules.

6. Form of the summons for such applications under the English Rules was cited and relied upon by Mr. S.B. Mukherjee. The said forms appear in pages 1093 and 1094 of Palmer's Company Precedents, Vol. I, 17th Edition. Mr. Mukherjee contends that the words 'in regard to delivery' as appearing in Rule 8 of the English Rules as well as in the form of the summons mentioned above show that Sub-section (3) of Section 80 of the English Act and Section 113 of our Act really authorises a person entitled to the delivery of shares or debentures to apply for delivery of the same,

7. I am unable to accept the said contention of Mr. Mukherjee. The words 'in regard to delivery' in my view mean 'for the purpose of delivery'. Sub-section (1) to Section 113 imposes an obligation upon the company to complete and to have ready for delivery the certificates of shares, debentures or debenture-stocks allotted or transferred in the circumstances and within the time mentioned above. The failure to do so, as we have noted earlier, entails, visiting with Imposition of fine under Sub-section (2) upon the company or any of the officer of the company who is liable for such default. Sub-section (3) of the said Section empowers the Court to make an order upon the company or any officer of the company only to make good the default in complying with the provisions of Sub-section (1) to the said Section.

8. The failure to comply with the requirements of Sub-section (1) to the said Section thus shall be visited with penal consequences. In that view of the matter, in my opinion, the said subsection has to be construed strictly (See : 1952 CriLJ836 ; See also Maxwell on Interpretation of Statutes 11th Edition pages 254-

55). The said Sub-section nowhere provides for delivery of the certificates of share or debentures or debenture-stocks but only enjoins upon the company to have the same ready for delivery. The said words in the subsection, in my opinion, should not be construed in such a way as to give an extended meaning to the words 'to have them ready for delivery.' The Sub-section (1) does not impose an obligation upon the Company to deliver the said shares etc. Thus, in my opinion, Sub-section (3) to the said Section does not authorise a person to have an order for delivery of the said shares. In that view of the matter, in my opinion, this application is misconceived and must fail.

9. In the premises, this application is dismissed. In the facts and circumstances of this case, I do not, however, make any order as to costs.

10. Certified for Counsel as against respective clients. All interim orders shall stand vacated. Operation of the order is stayed for four weeks.

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