

A Study on the Applicable Law in Shareholder Capital Contribution Disputes

-- Taking the Case of a Tianjin Education Company v. a Shanghai Pump Industry Company as an Example

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Abstract: The corporate capital system is the core cornerstone of the company law system, and the principle of capital maintenance is a key criterion for maintaining the security of commercial transactions and protecting the legitimate rights and interests of companies and creditors. Since the implementation of the subscribed capital system reform, disputes over defective share transfers and shareholder withdrawal of capital contributions have frequently occurred. In judicial practice, there have long been differing opinions on issues such as the litigation standing of shareholders acquiring defective shares, the exemption from liability for withdrawal of capital contributions, and the determination of liability for assisting in torts by corporate executives. This paper takes a shareholder contribution dispute case between a Tianjin education company and a Shanghai pump company as a case study, combining the current Company Law and relevant judicial interpretations, focusing on the core legal disputes of the case, and deeply analyzing three core legal issues: the rules for exercising the common interests of shareholders with defective shares, the statutory nature of liability for withdrawal of capital contributions, and the standards for determining the fault liability of directors and executives. The study finds that shareholders' obligation to contribute capital is a mandatory statutory obligation, which cannot be exempted due to the company's operating status, defective shares, or internal autonomy; shareholders acquiring defective shares legally enjoy the common interests of shareholders and have the litigation standing to sue shareholders who have withdrawn capital contributions; the determination of joint liability of corporate executives must adhere to the principle of fault liability, and mere official position does not constitute a basis for tort liability. The second-instance judgment in this case clarified the ambiguous boundaries in commercial trials and unified the standards for adjudicating similar cases. Based on an extended analysis of the disputed issues in this case, this article summarizes the difficulties and pain points in the current judicial application of shareholder contribution disputes, and proposes targeted optimization ideas for judicial application and compliance suggestions for commercial entities, providing theoretical and practical references for improving the adjudication logic of shareholder contribution disputes and regulating the investment behavior of market entities.

Keywords: Shareholder withdrawal of capital, defective shares, common benefit rights, directors' liability, capital maintenance principle.

1. Introduction

In 2013, my country's Company Law implemented a registered capital subscription system reform, abolishing the minimum registered capital requirement and the mandatory payment period, significantly lowering the entry threshold for market entities and stimulating the vitality of the commercial market. However, the supporting regulatory mechanisms and judicial rules for this reform are not yet fully developed, leading to rampant violations such as false capital contributions, bridge financing for verification, and withdrawal of registered capital. [1] These violations seriously undermine the principle of maintaining company capital and damage the credit system for commercial transactions. At the same time, the normalization of equity transfers has resulted in a large number of defective shares entering the market, leading to a year-on-year increase in disputes between the transferee of defective shares and the original shareholders with defective capital contributions, becoming a key and challenging aspect of civil and commercial adjudication [2].

In judicial practice, three major controversial issues have yet to reach a consensus: First, whether a shareholder acquiring defective shares has the standing to sue the original

shareholder who withdrew capital, and whether the shareholder exercising their rights suffers from defective capital contribution, thus extinguishing their right to sue; second, the boundaries of liability for shareholders' withdrawal of capital, and whether situations such as company closure, lack of external debt, or internal exemption can exempt shareholders from their statutory obligation to make up for the shortfall; third, how to define the joint liability of company directors and senior management for assisting in the withdrawal of capital, and whether their official positions can directly presume fault. [3] These issues not only concern the outcome of individual cases but also directly affect the implementation of the company law capital system and the stability of commercial transaction order [4].

The case of a Tianjin-based education company suing a Shanghai-based pump company over a shareholder contribution dispute is a typical example of a reversal of the original judgment on appeal. [5] The first and second instance courts reached diametrically opposed conclusions on the core issues, highlighting the current divergence in the application of law in shareholder contribution disputes. This article uses this case as a starting point, breaking away from the traditional narrative mode of case analysis, focusing on the legal application challenges behind the case. Combining fundamental theories of company law and judicial rules, it

deeply discusses core legal issues such as the right to sue for defective shareholders, liability for withdrawing capital contributions, and liability for misconduct by senior management. It summarizes the logic of judicial decisions, identifies loopholes in the application of regulations, and proposes suggestions for improvement, aiming to provide a reference for the judicial adjudication of similar cases and the compliant operation of market entities.

2. Analysis of the Basic Facts and Judgment Logic of the Case

2.1. Basic Facts of the Case

A microfinance company in Shanghai was established with a registered capital of 60 million yuan. It had nine original shareholders, including a Shanghai-based pump manufacturing company and a Shanghai-based startup company, with the pump manufacturing company contributing 6 million yuan. During the company's establishment, none of the original shareholders contributed their own funds; instead, they all used bridge financing from third parties to complete the business registration verification process. Within two days of the company's legal registration, all shareholders transferred the entire 60 million yuan of registered capital back to the funding provider without any real transaction consideration or justifiable reason, and without following the statutory capital reduction procedures or financial transfer approval procedures. This constitutes a collective act of withdrawing capital contributions.

Subsequently, the microfinance company was subject to enforcement proceedings by the People's Court due to external debt disputes, and had no effective assets available to repay its debts. After investigation, the executing court found that the original shareholders, including a Shanghai-based pump company, had illegally withdrawn their capital contributions, and legally added them as judgment debtors, and seized and executed some of the pump company's assets.

A Tianjin-based education company legally acquired shares in a microfinance company through a judicial auction, becoming a legitimate shareholder. The company was aware that a Shanghai-based pump manufacturing company had withdrawn 6 million yuan of registered capital. To protect its capital integrity, the Tianjin education company filed a lawsuit in court, requesting the Shanghai pump manufacturing company to return all withdrawn capital to the microfinance company. The company also argued that the then-chairman of the Shanghai pump manufacturing company, Mr. Lin, assisted in the withdrawal of capital and should bear joint and several liability for repayment.

In response to the plaintiff's claims, a Shanghai-based pump company and Mr. Lin argued that: firstly, the Tianjin-based education company had not completed the industrial and commercial registration of the equity transfer, and the equity it acquired had defects in capital contribution and had not actually been paid up, thus lacking legal standing as a plaintiff; secondly, the microfinance company in question had ceased operations for many years, had no outstanding debts, and its legitimate rights and interests had not suffered substantial damage, therefore it was not required to make up the capital contribution; thirdly, Mr. Lin only served as the company's chairman and did not engage in any specific acts of assisting in the withdrawal of capital, and should not bear joint liability. The court of first instance adopted the defendants' arguments and dismissed all of the Tianjin-based

education company's claims. Dissatisfied with the first-instance judgment, the plaintiff appealed to the Shanghai First Intermediate People's Court. The court of second instance ultimately overturned the first-instance judgment, ordering the Shanghai-based pump company to return the withdrawn capital of 6 million yuan, while dismissing the plaintiff's claim that Mr. Lin should bear joint liability.

2.2. Core Judicial Logic

The core value orientation of the second-instance judgment in this case is to uphold the principle of capital maintenance under corporate law and clarify the statutory and mandatory nature of shareholders' capital contribution obligations. The second-instance court pointed out that a shareholder's withdrawal of capital directly infringes upon the corporate property rights. The shareholder's right to claim the return of capital based on judicial interpretation is a common benefit right, the core purpose of which is to maintain the company's capital adequacy and ensure transaction security, not to protect the shareholder's personal interests. Therefore, the "other shareholders" who can exercise the right to claim capital under judicial interpretation should not be narrowly interpreted as "flawless and compliant shareholders." Even if the shareholder exercising the right has defects in their capital contribution or the company internally expresses an intention not to return the capital contribution, this does not exempt the shareholder who withdrew capital from the statutory obligation to make up the shortfall. Under the premise that the company has not completed statutory liquidation and has not settled all debts and liabilities, in order to protect the legitimate rights and interests of potential creditors, the withdrawn registered capital must be made up in accordance with the law.

3. In-depth Analysis of The Core Legal Application Issues in This Case

3.1. Issues Concerning the Determination of The Litigation Subject Qualification of The Shareholder Who Acquires Defective Equity

The core difference between the first and second instance judgments in this case lies in the differing understandings of the legal standing of shareholders who acquire defective shares and the rules governing the exercise of shareholders' common interests. The first instance court, adhering to traditional judicial thinking, held that because the shareholder's capital contribution was defective and the business registration change was incomplete, they were not a legitimate and compliant shareholder and therefore lacked the right to file a lawsuit regarding shareholder capital contribution disputes. This judgment essentially confuses the essential differences between the requirements for shareholder qualification and the requirements for adversarial proceedings, and between shareholders' individual and common interests, demonstrating a clear deviation in the application of law.

From the perspective of shareholder qualification acquisition rules, business registration changes are merely a public notice requirement for equity to be enforceable against third parties, not a requirement for the effective acquisition of shareholder qualification. According to basic company law theory and prevailing judicial opinion, internal confirmation

of shareholder qualification relies on effective legal documents, shareholder register records, and shareholder meeting resolutions confirming shareholder rights. In this case, a certain education company in Tianjin acquired equity through a legally mandated judicial auction. The effective ruling of the People's Court has clearly confirmed its shareholder status. This acquisition is legal and valid, unaffected by whether the business registration change has been completed, and the company legally possesses full shareholder rights and standing to sue.

From the perspective of the nature of rights, a shareholder's right to request a shareholder who has withdrawn capital to make up the shortfall is a typical common benefit right, distinct from individual benefit rights such as the right to dividends and the right to residual property distribution. Individual benefit rights focus on the personal property interests of shareholders, while the purpose of common benefit rights is to maintain the integrity of the company's independent property, replenish the company's registered capital, and protect the public interests of all shareholders and company creditors. It possesses the characteristics of public interest, legality, and independence. The exercise of common benefit rights is not contingent upon the shareholder fully fulfilling their capital contribution obligations. If judicial rulings only allow shareholders with no defects to exercise this right, it will directly lead to a large number of companies with defective capital contributions having long-term vacant capital, allowing shareholders who have withdrawn capital to legally escape legal responsibility, completely violating the legislative intent of the principle of capital maintenance. Therefore, the existence of defects in a shareholder's own equity does not affect their legal right to urge shareholders who have withdrawn capital to make up the shortfall.

3.2. Issues Concerning the Application of Law Regarding the Exemption of Liability for Shareholders Withdrawing Capital Contributions

In this case, the core argument of the defendant pump company was that the company had ceased operations, had no external debts, and that it did not require shareholders to return their capital contributions, thus claiming exemption from its obligation to make up for the shortfall. This defense reflects a common legal misconception in judicial practice: that shareholders are not liable for withdrawing capital when the company has no actual debts and has ceased operations. The second-instance judgment completely rejected this view, clarifying the statutory nature of shareholders' liability for withdrawing capital.

According to Article 12 of the "Provisions of the Supreme People's Court on Several Issues Concerning the Application of the Company Law of the People's Republic of China (III)," if a shareholder withdraws their capital contribution without following legal procedures, thereby harming the company's interests, it constitutes a withdrawal of capital contribution. In this case, the shareholders used bridge financing for capital verification, returned the funds in full without consideration two days after the company's establishment, and failed to complete the procedures for capital reduction and legal transfer. This fully meets the statutory requirements for withdrawal of capital contribution, and this fact has been confirmed by a separate effective judgment. The facts are clear, and the legal basis is sufficient.

From a legal perspective, shareholders' obligation to

contribute capital is a legally mandated obligation, not a contractual obligation between shareholders and the company. Its purpose is to maintain the company's capital credit and protect the transaction security of unspecified creditors. It is binding on all parties and is not subject to the company's operating status, internal autonomy, or the existence of explicit debts. Although the microfinance company in question has ceased operations and revoked its business license, it has not completed the statutory liquidation and deregistration procedures. The company's legal entity status still exists, and potential creditor-debtor relationships have not been completely eliminated. Registered capital, as a credit guarantee for the company's external debt repayment, must remain substantial and complete. The principle of capital maintenance, as a mandatory fundamental principle of company law, takes precedence over the company's internal autonomy. A unilateral expression of intent by the company not to return its capital contribution cannot override mandatory legal provisions, nor can it serve as a basis for shareholders to be exempt from their statutory capital contribution obligations.

3.3. Issues Concerning the Joint Liability of Company Directors Who Assist in The Withdrawal of Capital Contributions

The determination of joint liability for assisting in the withdrawal of capital by corporate directors and senior managers is a difficult issue in commercial trials. The core controversy lies in whether fault and liability can be directly presumed based on their official positions. In this case, Lin Moumou held the dual positions of legal representative of the pump company and chairman of the microfinance company. The plaintiff claimed that he should bear joint liability based on this, but the appellate court did not support it, accurately defining the boundaries of the tort liability of senior executives.

According to the judicial interpretation of the Company Law, the core elements constituting joint liability for directors and senior executives in assisting in the withdrawal of capital contributions are subjective fault and objectively carrying out specific acts of assistance; both are indispensable. A mere position cannot directly presume tort liability. From the perspective of basic tort law theory, the establishment of joint tort liability requires four elements: subjective intent to collude, objective tortious act, causation, and damage. In this case, all existing evidence fails to prove that Lin participated in specific acts of assistance such as the decision-making process for advance funding verification, the approval of fund transfers, and the instruction to withdraw capital contributions; there is no evidence to prove that he had subjective intent or gross negligence.

Civil litigation follows the principle of "whoever asserts must prove," and the plaintiff, failing to provide evidence that Lin assisted in the infringement, should bear the adverse consequences of failing to provide evidence. The second-instance judgment strictly distinguished the boundary between official position and tortious conduct, eliminating the improper "position-based liability" logic in commercial trials. It effectively regulated the illegal act of maliciously assisting in the withdrawal of capital while fully protecting the legitimate rights and interests of corporate executives in performing their duties, aligning with the basic principle of fault liability in civil law.

4. Common Issues in the Judicial Application of Current Shareholder Contribution Disputes

4.1. Inconsistent Standards for Identifying the Subjects Exercising Common Benefit Rights

In judicial practice, some courts continue to adhere to conservative judicial thinking, using defects in shareholder contributions as a basis for restricting their exercise of common benefit rights, and wrongly conflating the application standards of shareholders' individual and common benefit rights. Different courts interpret "other shareholders" in inconsistent ways, with some courts applying a narrow interpretation, recognizing only the right to sue of shareholders who have made no defects and have fulfilled their obligations. This results in the inability to rectify capital defects in companies with defective contributions through internal accountability, making it difficult to effectively regulate the withdrawal of capital contributions, and leading to judicial irregularities such as inconsistent judgments in similar cases.

4.2. The Determination of Exemption from Liability for Withdrawal of Capital Contributions is Confused

Because the law does not explicitly list exemptions for liability for withdrawing capital contributions, in practice, many shareholders use reasons such as company closure, lack of explicit liabilities, or voluntary exemption by the company to defend themselves against liability. Some courts have failed to accurately grasp the mandatory nature of the capital maintenance principle, excessively respecting the company's internal autonomy, neglecting the credit guarantee function of registered capital for potential creditors, wrongly exempting shareholders from their statutory obligation to make up for lost capital contributions, weakening shareholders' legal responsibility for capital contributions, and fostering a trend of false capital contributions and withdrawal of capital contributions.

4.3. The Standards for Attributing Liability for Senior Executives Assisting in Torts Are Unclear

In disputes involving senior executives assisting in the embezzlement of capital, two extreme judicial tendencies exist: some courts presume fault solely based on the executive's official position, holding them jointly liable, resulting in excessive accountability; others excessively relax the standards of determination, exempting executives from liability even if they condoned or acquiesced to irregularities due to a lack of direct evidence of assistance, leading to ineffective accountability. This ambiguity in liability assessment hinders the regulation of senior executives' conduct and fails to balance the rights and interests of all parties involved.

5. Suggestions for Improving the Application of Law in Disputes over Shareholder Contributions

5.1. Unifying the Judicial Standards for The Exercise of Common Benefit Rights

The judiciary should clearly distinguish the applicable rules for shareholders' individual and collective rights, establishing the adjudication standard that "defects do not affect the exercise of collective rights." Through guiding cases, meeting minutes, and other means, it should be clarified that "other shareholders" in judicial interpretations refer to all surviving shareholders, without requiring the absence of defective capital contributions or completion of business registration as prerequisites for exercising their rights. Unified judicial standards should be established to prevent inconsistent judgments in similar cases, fully leveraging the role of internal shareholder accountability mechanisms to compel shareholders to make up for any undue capital contributions and replenish the company's capital.

5.2. Clarify the Absolute Legal Nature of Liability for Capital Withdrawal

The mandatory principle of maintaining capital is strictly upheld, clarifying that the obligation of shareholders to replenish their withdrawn capital is a statutory liability, not a civil right that the company can dispose of. Company closure, lack of explicit debts, and internal exemption agreements do not constitute statutory grounds for exemption. As long as the company's legal entity status is not cancelled and liquidation procedures are not completed, the shareholder's obligation to replenish capital remains, effectively preventing shareholders from exploiting loopholes in the system to evade their statutory capital contribution responsibilities.

5.3. Refine the Rules for Determining the Liability of Senior Executives for Misconduct

A comprehensive system for determining liability based on "identity + behavior + fault" is established, clarifying that mere job title does not constitute infringement, and senior executives without fault or specific assistance are not liable. At the same time, the standards for determining fault are refined; for senior executives who knowingly or should have known of shareholders withdrawing capital, failed to fulfill supervisory obligations, assisted in handling fund transfers, or approved irregular operations, they are directly deemed to have committed fault and are legally ordered to bear joint liability, thus achieving a balance between accountability and protection.

5.4. Strengthen the Commercial Compliance Awareness of Market Entities

For equity transferees, comprehensive due diligence must be conducted before the equity transaction, verifying the target company's capital verification records, cash flow, and shareholder contribution files, fully assessing the risks of equity defects, and mitigating subsequent liability risks through contractual provisions. For company shareholders, the misconception of "zero-risk capital contribution" under the subscribed capital system must be abandoned, and illegal activities such as bridging loan verification and withdrawal of capital must be avoided; they must strictly fulfill their capital

contribution obligations in accordance with the law. For senior management, it is necessary to standardize their performance of duties, improve the company's financial approval system, promptly investigate and stop abnormal fund flows, and mitigate legal risks in the course of their duties.

6. Conclusion

An in-depth analysis of the shareholder contribution dispute case between a Tianjin-based education company and a Shanghai-based pump company reveals that the core issue in shareholder contribution disputes is the conflict between the application of corporate capital systems, shareholder rights systems, and tort liability rules. The second-instance judgment in this case has significant judicial demonstrative value, thoroughly clarifying three core legal application issues: First, shareholders who acquire defective shares legally enjoy the common interests of shareholders; business registration is not a prerequisite for shareholder qualification, and their own defective contribution does not affect their standing to sue shareholders who have withdrawn their capital contributions; Second, the obligation of shareholders to replenish withdrawn capital is a legally mandatory obligation; the principle of capital maintenance takes precedence over the company's internal autonomy; the company's operating status and the existence of explicit debts cannot be grounds for exemption from liability; Third, the joint liability of company directors and senior executives for assisting in the withdrawal of capital is subject to the principle of fault liability, requiring specific acts of assistance and subjective fault as essential elements, prohibiting liability solely based on their official positions.

Under the backdrop of the subscribed capital system reform, my country's corporate capital system has become more relaxed, but the core principles of maintaining and adequacy

of capital have never been weakened. In judicial practice, it is imperative to adhere to the bottom line of the corporate law's capital system, unify the standards for determining the rights of shareholders with defects, liability for withdrawing capital contributions, and liability for misconduct by senior management, and correct judicial errors in practice. Simultaneously, market entities need to establish a compliant business philosophy, regulate equity transactions and capital contributions, and reduce shareholder disputes at the source. Judicial organs and market regulatory departments should work together to improve the corporate capital supervision system through precise judicial rulings and strict administrative supervision, safeguard the security of commercial transactions and market credit order, and promote the construction of a rule-of-law business environment.

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