

THE NATIONAL COMPANY LAW TRIBUNAL  
NEW DELHI BENCH  
AT NEW DELHI

Company Application No. 194/C-II/2016

In

COMPANY PETITION NO.52 (ND)/2016

**IN THE MATTER OF:**

Mr. Pankaj Arora & Ors.

Petitioners

Vs.

International Institute of Financial Markets Ltd. & Ors.

Respondents

**CORAM: INA MALHOTRA, MEMBER (JUDICIAL)  
S.K.MOHAPATRA, MEMBER (TECHNICAL)**

Present:

For Petitioners:

1. Virender Ganda
2. Vipul Ganda
3. Tarun Mehta
4. Shelly khanna
5. Arun Bagai

For Respondent:

1. Krishnendu Dutta
2. Rishi Sood
3. Jatin Sehgal

**DATE OF ORDER: 19/05/2017**

**ORDER**

Respondents No. 1 to 5 have filed the instant CA No. 194/C-1/2016 challenging the maintainability of Company Petition No. 52(ND) of 2016.

2. It is the case of the applicants that the Company Petition is liable to be dismissed at the very threshold as the petitioners here in have no *locus standi* to file the petition. It is contended that the Petitioners were neither the shareholders nor the members of the respondent no. 1 company as on date of presentation of the company petition or even as on date. As the petitioners do not hold the requisite 1/10<sup>th</sup> share of the total shareholding of the company as required under Section 399 of the Companies Act 1956, they have no right to file the company petition under Section 397 or 398. Ld. Counsel for the applicants emphasised that the provisions contained in Section 399 in regard to entertainability/maintainability of the company petition are mandatory and pre-emptory in nature.

3. It is pertinent to note here that the company petition has been filed *inter alia* to rectify the Register of members and to restore the shareholding of the petitioners to the original level of 84% of the total share capital of the respondent no. 1 company as of March 16, 2013. The main grievance of the petitioners is that in the entire of the shareholding has been fraudulently and illegally transferred by respondents on 25<sup>th</sup> March 2013.

4. Ld. Counsel for the Respondents/Applicant also impugns the maintainability of the present petition on grounds of delay and laches,



vagueness and involving complex and complicated facts, adjudication of which can only be settled by through trial by a Civil court.

5. We have heard the arguments of the Ld. Counsels at length. With respect to the objections regarding maintainability, on grounds of the Petitioners not possessing the requisite equity in the Respondent no. 1 Company, it is well settled vide a catena of judgments of the Superior Courts that the averments made in the petition alone are germane <sup>for L</sup> entertaining the petition for the purpose of maintainability, locus or jurisdiction, notwithstanding the final outcome.

Further in a recent judgement in the case of Anoop Kumar Aggarwal vs. Crystal Thermotech Ltd., Hon'ble NCLAT has held that:

*“ 28. For the reasons recorded above, we hold that in the cases where an applicant alleges that his shareholding has been brought down by way of oppression and mismanagement below 1/10<sup>th</sup> of the total shareholding without notice and knowledge then it is the duty of Tribunal to determine whether the applicant had 1/10<sup>th</sup> of the shareholding prior to the date of alleged oppression and mismanagement. Such petition cannot be dismissed on the ground that the applicant's shareholding is below 1/10<sup>th</sup> of the total shareholding of the Company on the actual date of presentation of the Company Petition.”*

6. The said Ruling was again relied upon in the case of M/s. Ranchi Metal & Ispat Pvt. Limited vs. Surjeet Singh in Company Appeal (AT) No. 31 of 2016 wherein Hon'ble NCLAT reiterate that the crucial date for determination of requirements under section 399 will be the date the alleged date of




oppression and mismanagement in bringing down the shareholding below 1/10<sup>th</sup> of the total shareholding of the company took place.

7. This tribunal is bound by the aforesaid precedent laid by Hon'ble NCLAT and therefore as the petitioners had 84% of the shareholding before the alleged transfer/ brought down of their shareholding, we hold that the company petition is maintainable.

8. It is also the case of the applicant that the company petition is liable to be dismissed as the same suffers from gross delay and laches. It is submitted that the company petition has been filed after the limitation period of 3 years in 2016, challenging the acts of transfer of their shares which relate back to the year 2013. This has been countered with the submission that the company petition has been filed within the limitation period from the date of knowledge. Question of limitation is a mixed question of law and fact and cannot be tried as a preliminary issue.

9. With respect to the objections about the petition suffering from vagueness or involving complicated issues which necessitate trial by a Civil Court, this Bench is of the opinion that it is too premature to dismiss the petition at the very threshold on the mere asking of the respondents, especially since they have failed to even file their reply. Such an action would result in a total miscarriage of justice. At this stage prima facie, we also do not find that the facts are complicated or cannot be disposed off in a summary procedure by this Tribunal.

10. Some other objections have been raised like that the petitioners have not come with clean hands and are trying to portray the facts in a distorted manner by suppressing material facts. It is submitted that there has been no



illegal/fraudulent dilution of the shareholding of the petitioners and that the applicants have duly purchased the shares for a valuable consideration.

11. In this regard it is reiterated that in the absence of relevant company records and reply from respondent/applicants, the matter cannot be appreciated in its entirety and that the issues which involved mixed question of fact and law, could not be treated as preliminary issue which could be dealt with under the law. With the legislative mandate of early adjudication, the Tribunal is entrusted to decide all issues in disputes at the same time, as far as possible, without trying some of them as preliminary issue.

12. Needless to say, that all issues in dispute, including delay and limitation in filing the company petition, could have been raised for adjudication in the main company petition itself. It is highly regrettable that the respondents have resorted to filing such an application which has resulted in delay in adjudication of the main Company Petition. Despite directions on record, the respondents have failed to file their reply. This inordinate delay occasioned due to want of filing the reply on time has resulted in wasting the time of Bench. The procedure envisaged for an expeditious disposal under the Act gets derailed by filing such applications, on<sup>a</sup> mere demurer. None of the grounds raised justify dismissing the petition at the very threshold or nipping it in the bud.

The CA is accordingly dismissed with costs of Rs. 20,000/- to be paid to the Prime Minister's Relief Fund.



**(S.K. Mohapatra)**  
**Member Technical**



**(Ina Malhotra)**  
**Member Judicial**