

**NATIONAL COMPANY LAW TRIBUNAL  
AHMEDABAD BENCH  
AHMEDABAD**

**IA 9/2017 in TP No. 116/58-59/NCLT/AHM/2016 (New)  
C.P. No. 1/58-59/CLB/MB/2016 (Old)**

Coram:

**Present: Hon'ble Mr. BIKKI RAVEENDRA BABU  
MEMBER JUDICIAL**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD  
BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 26.04.2017**

Name of the Company:

Hasmukh B. Baraiya

V/s

Symphony Ltd.

Section of the Companies Act:

Section 58-59 of the Companies Act, 2013

S.NO.	NAME (CAPITAL LETTERS)	DESIGNATION	REPRESENTATION	SIGNATURE
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1.	ARVIND PARIKH	ADVOCATE	RESPONDENT	
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2.	For J. Sagar Associates GARGI R. VIJAS	ADVOCATE	R-S	
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**ORDER**

None present for petitioner. Learned Advocate Mr. Arvind Parikh i/b J Sagar present for Respondents.

Order pronounced in open Court. Vide separate sheet.

  
**BIKKI RAVEENDRA BABU  
MEMBER JUDICIAL**

Dated this the 26<sup>th</sup> day of April, 2017.

**NATIONAL COMPANY LAW TRIBUNAL  
AHMEDABAD BENCH  
AHMEDABAD**

**T.P. No. 116/2016(New)**

**CP No.01/56,58,59/CLB/MB/2016 (Old)**

**With**

**IA No. 9 of 2017**

**CORAM: SRI BIKKI RAVEENDRA BABU, MEMBER JUDICIAL**

**Date: 26<sup>th</sup> April, 2017**

**In the matter of:**

Hasmukh Bachubhai Baraiya  
(Shareholder of M/s. Symphony Limited)  
Patel Sheri, Sanosari, Tal. Lalpur,  
District-Jamnagar-360515 Gujarat.

: Petitioner.

**Versus**

1. Symphony Limited  
Regd. Office, "Symphony House"  
Third Floor, FP-12, TP-50,  
Off. S.G. Highway, Bodakdev,  
Ahmedabad-380054, Gujarat.
2. Mr. Manan Chandraprakash Bhavsar  
Company Secretary, Symphony Ltd.,  
104-A, Parmeshwar Avenue,  
Vishwakarma Colony,  
Gordhanwadi Tekra, Kankaria,  
Ahmedabad-380028
3. Mr. Paresh Dave, Manager  
Sharepro Services (India) Pvt. Ltd.,  
(Registrar and Share Transfer Agent)  
416-420, 4<sup>th</sup> Floor, Devnandan Mall,  
Opp: Sanyash Ashram, Ashram Road,  
Ellisbridge, Ahmedabad-380009,  
Gujarat.
4. Ms. Indira Karkera, Manager-Client,  
Sharepro Services (India) Pvt. Ltd.,  
13 AB, Samhita Warehousing Complex,

2<sup>nd</sup> Floor, Near Sakinaka Telephone  
Exchange, Andheri-Kurla Road,  
Sakinaka, Andheri (E)  
Mumbai-400072

5. Mr. Subrat Rath  
106-A, Regent Colony-Ground Floor,  
Kolkatta-700040 : Respondents.

**Appearance:**

Mr. Rahul Sahasrabuddhe, learned PCS for the Petitioner.

Mr. Mr. Bijal Chhatrapati with Mr. Arvind Parikh,  
Learned Advocates for Respondents No. 1 and 2.

Ms. Gargi Vyas, learned Advocate for Respondent No.5.

None present for other Respondents.

**FINAL ORDER**

Pronounced on 26<sup>th</sup> day of April, 2017

1. This Petition is filed by the Shareholder of Symphony Limited, seeking direction/order to Symphony Limited (1<sup>st</sup> Respondent) and Share Transfer Agent (Respondent No.3) to issue duplicate shares in respect of 21500 equity shares vide Ledger Folio Nos. 021673 and 021674 and for an order to release unclaimed dividend on those shares under Sections 56, 58 and 59 of the Companies Act, 2013.
2. Symphony Limited (Respondent No.1) is a Listed Public Limited Company having its Registered Office in Bodakdev, Ahmedabad. Petitioner is holding 21000 equity shares vide Ledger Folio No. 021673 and 500 equity shares vide Ledger Folio No. 0121674.
3. It is stated in the Petition that the share certificate of the petitioner have been misplaced. Third Respondent is the Share



Transfer Agent of the 1<sup>st</sup> Respondent Company from 2010. Petitioner made a request to the Registrar of the 1<sup>st</sup> Respondent Company and Share Transfer Agent of the 3<sup>rd</sup> Respondent to issue duplicate shares vide letter dated 11.9.2015.

4. Petitioner made another request to Respondent No.3 by a letter dated 7.10.2015 to provide procedure/formalities for issuance of duplicate share certificates through Mail. Petitioner issued a reminder on 9.10.2015 to Respondent No.4 for intimation of process for issue of duplicate shares through Mail on 2.11.2015. Petitioner received a letter from Respondent No.3 asking the Petitioner to attend their Mumbai Office in person along with certain documents mentioned in that letter. On 10.11.2015 Petitioner wrote letter informing Respondent No.3 that he visited the office of Respondent No.3 on 15.10.2015 and the office of Respondent No.1 on 16.10.2015 and produced relevant documents for verification in person in respect of his application dated 11.9.2015 for issue of duplicate shares.

5. On 20.11.2015, the 3<sup>rd</sup> Respondent wrote a letter to the Advocate for the Petitioner informing that the impugned shares were sold by the Petitioner in the year 1997 and the 5<sup>th</sup> Respondent had lodged the impugned share certificates for the purpose of transfer to the erstwhile Registrar and the signature appearing on the Transfer Deed was tallying with the specimen signature mentioned in the records of the Company but the transfer of shares was refused on the ground of deficiency of stamp duty. In that letter, 3<sup>rd</sup> Respondent asked the Petitioner to approach the 5<sup>th</sup> Respondent or settle the matter in a competent Court of Law. On 28.11.2015, the Advocate for the Petitioner addressed a letter to Respondent No.4 for providing documents which was received by Respondent No.3 from Respondent No.5. On 12.12.2015, Petitioner filed a complaint against 1<sup>st</sup> Respondent for non-issuance of duplicate shares.



On 22.12.2015, 3<sup>rd</sup> Respondent wrote a letter to the Petitioner asking him to settle the matter with Respondent No.5. By letter dated 22.12.2015, 1<sup>st</sup> Respondent asked the Petitioner to provide Court order to claim his shares stating that they were unable to process the request of the Petitioner due to a claim by Respondent No.5. On 31.12.2015 Petitioner got issued a legal notice to Respondents No. 1, 2, 3 and 4. On 1.1.2016 Petitioner registered a complaint against 1<sup>st</sup> Respondent for non-payment of dividend and non-receipt of share certificate through BSE Ltd. On 5.1.2016 Petitioner wrote a letter to the Securities and Exchange Board of India for providing details as to why his complaint is closed without proper redressal. On 15.1.2016 Petitioner made a complaint to the Registrar of Companies, Gujarat for non-receipt of dividend against Respondent No.1. On the same day, Petitioner also sent a reminder to the 3<sup>rd</sup> Respondent for issue of duplicate share certificates. On 16.1.2016, Petitioner made a complaint to the Registrar of Companies, Gujarat for non-receipt of Annual Report against 1<sup>st</sup> Respondent.

6. It is stated by the Petitioner that his name continues to appear in the Register of Members of 1<sup>st</sup> Respondent Company; annual returns filed by the 1<sup>st</sup> Respondent with Registrar of Companies; and in the list of unpaid dividends, but Petitioner was denied duplicate shares which in turn amounts to denying membership of the Petitioner. Hence the Petition was filed before the Company Law Board on 1.2.2016.

7. 1<sup>st</sup> Respondent in its Reply stated that under Section 59 of the Companies Act, 2013 this Tribunal has no power to issue direction for issuance of duplicate shares. It is stated that issuance of duplicate shares is governed by Section 46(2) of Companies Act, 2013 which corresponds to Section 84(2) of the Old Companies Act, 1956, and Rule 4 of the Companies (Issue



of Share Certificates) Rules, 1960. Rule 4 (3) of the Companies (Issue of Share Certificates) Rules, 1960 provides as under;

*“No duplicate shares certificates shall be issued on lieu of those that are lost or destroyed without the prior consent of the board or without payment of such fees, if any, not exceeding Rs. 2 and on such reasonable terms, if any, as to evidence and indemnity and the payment of out-of-pocket expenses incurred by the company in investigating evidence, as the board thinks fit.”*

8. It is also stated in the Reply that the Company had received claim of ownership on the impugned shares from Respondent No.5. It is stated that Respondent No.5 claimed that he purchased those shares from the Petitioner in the year 1998 itself. It is also stated that the Respondent No.5 filed Civil Suit for declaration and injunction in respect of impugned shares vide TS No. 87 of 2016 on the file of District Court, Alipore praying for transfer of impugned shares in his name and injunction restraining the Company from transferring the shares in the name of the Petitioner during the pendency of the Suit. It is further stated that the jurisdiction of this Tribunal under Section 59 of the Companies Act is summary in nature and this Tribunal cannot adjudicate serious allegations of fraud, forgery, or title of shares of the persons seeking relief under Section 59. It is stated that this Tribunal has to relegate the Petitioner to a Civil Court to determine the disputed title over the impugned shares. It is further stated that Respondent No.2 is Company Secretary of Respondent No.5 and he has no role to play in the present matter and he is also not concerned with the inter se disputes between the Petitioner and Respondent No.5. Moreover, no relief is claimed against the Respondent No.2 and therefore Respondent No.2 is neither a necessary nor a proper party. Respondent No.2 has been improperly joined in this Petition and therefore his name should be struck off from the array of Respondents.

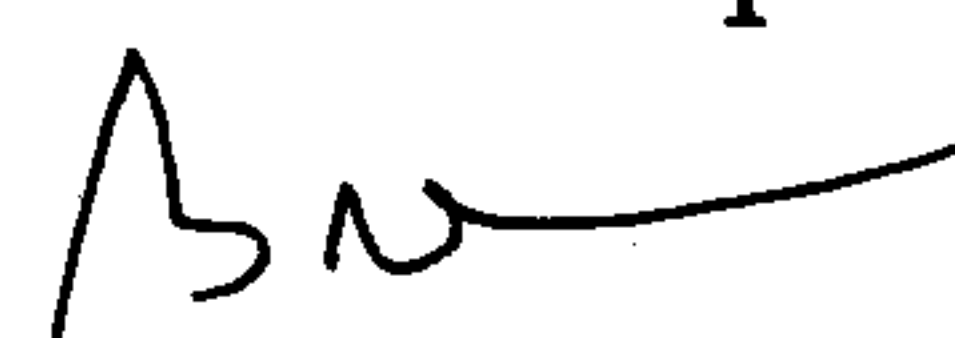
9. The 1<sup>st</sup> Respondent admitted that Petitioner holds 21000 equity shares of Rs. 2 each under Ledger Folio No. 021673 and 500 shares under Ledger Folio No. 021674. It is pleaded in the Reply that Petitioner did not state the date on which he lost the share certificates and left as vague as possible. Petition is barred by limitation. After the Petitioner filed letter for issuance of duplicate share certificates, 5<sup>th</sup> Respondent filed an application claiming 20000 equity shares of the Petitioner under Folio No. 021673 alleging that he had purchased the said shares from open market in the year 1997 and sent the transfer deeds to Pinnacle Shares Registry Pvt.Ltd., but have not received duly transferred shares. In October 2015, 3<sup>rd</sup> Respondent requested the Petitioner to come to Mumbai Office for verification of original documents in November 2015. Respondent No.5 sent copy of share transfer deeds, contract note dated 12.1.1998, money receipt, bank statement showing details of withdrawal of cheque given for purchase of shares of 1<sup>st</sup> Respondent. 1<sup>st</sup> Respondent Company furnished the details of names and contact details of one party to the other and asked them to settle the issue or obtain an order from a competent Court. 1<sup>st</sup> Respondent stated that the disputed shares are only 20000 of the value of Rs. 2 each.

- 9.1. 1<sup>st</sup> Respondent filed Affidavit-in-Reply stating that Pinnacle Shares Registry Pvt. Ltd., was not the 1<sup>st</sup> Respondent's Share Transfer Agent as on 1.1.1998. The said Agent was appointed as Share Transfer Agent in or around 2003. It is also stated that in the year 1998 the shares of 1<sup>st</sup> Respondent Company were not listed on NSE. One Rusoday Securities Limited was a Member of NSE Ltd; the contract note relied upon by the Respondent No.5 was issued by Rusoday Securities Limited. It is also stated that the Transfer Deed submitted by Respondent No.5 suggests a purchase price of Rs. 3.20 per

share on 1.1.1998, but as per the website of Bombay Stock Exchange the market price of the shares on that day was opened at Rs. 1.60 per share; the highest was Rs. 1.60 per share; the lowest was Rs. 1.30 per share; and closed at Rs. 1.50 per share. It is stated that in one contract note the name of the 1<sup>st</sup> Respondent Company is written as "Symphony Limited" and in another contract note, it is mentioned as "Symphony Sanskrut Comfort Systems Limited".

10. 2<sup>nd</sup> Respondent, who is a Company Secretary of 1<sup>st</sup> Respondent Company stated that he has no role to play in the present matter and he is not concerned with the inter se dispute between Petitioner and Respondent No.5. It is also stated that he is unnecessarily impleaded as a party in the present Petition and his name may be struck off from the array of the Respondents.

11. Respondent No.5 stated that he had bona fide purchased 4000 equity shares of Symphony Limited (1<sup>st</sup> Respondent Company) on 13<sup>th</sup> January, 1998 from M/s. Rusoday Securities Limited on a mutually agreed consideration of Rs. 12,800 (i.e. at an agreed price of Rs. 3.20 per share) including its brokerage and he made the payment vide Cheque No. 398411 dated 12<sup>th</sup> January, 1998 drawn on ICICI Bank. As per the details mentioned in the Transfer Deeds there were movements of shares through inter-exchange broker transaction and finally they were handed over to the 5<sup>th</sup> Respondent by M/s. Rusoday Securities Limited on 13<sup>th</sup> January, 1998 with the transfer deed under consideration. Respondent No.5 sent the Transfer Deed to the Share Transfer Agent on 5<sup>th</sup> February, 1998 with all attachments and annexures. Respondent No.5 is continuously following up the matter but he was unsuccessful in getting the shares transferred. The transfer deeds were misplaced in transit when they were returned to the Respondent No.5 for





deficit stamp duty. Respondent No.5 is ready to pay the deficit stamp duty. Petitioner on receipt of the notice of Annual General Meeting of Respondent No.1 came to know that the shares sold by him were not transferred to the 5<sup>th</sup> Respondent. The letter dated 2.11.2015 of 1<sup>st</sup> Respondent Company clearly shows that there is a third party claim on the shares of the Petitioner in the capacity of the buyer and the buyer produced satisfactory documentary evidence to prove that 5<sup>th</sup> Respondent purchased the old shares of Rs. 10 each for consideration. The letter of 1<sup>st</sup> Respondent dated 20.11.2015 also shows that the signature of the transferor on the transfer deed tallied with the specimen signature of the petitioner in the records of the 1<sup>st</sup> Respondent Company and the shares were not transferred only due to insufficient stamp. As per the provisions of Section 46 of the Companies Act, 2013 read with Rule 6 of the Companies (Share Capital and Debentures) Rules, 2014, it is 5<sup>th</sup> Respondent who is eligible to file the application for issue of duplicate share certificates with the Company or the Court having jurisdiction. From the letter of Symphony Limited dated 20.11.2015 it is clear that the share certificates sent by Respondent No.5 have been lost at the end of the Respondent No.1. It is also stated that this Tribunal has no power to give directions to issue duplicate share certificates under Section 59 of the Companies Act. Petitioner started writing letters only from 11<sup>th</sup> September, 2015, i.e., after receiving the notice of Annual General Meeting of 1<sup>st</sup> Respondent Company, for issue of duplicate share certificates without any documentary evidence to show that the shares were lost. Petitioner did not lodge any complaint or FIR for the loss of share certificates. Even after the Petitioner came to know that Respondent No.5 lodged for transfer of shares in his name, petitioner did not lodge any report with the police. 5<sup>th</sup> Respondent filed the Suit TS No. 87 of 2016 on the file of Alipore District Court praying for transfer of shares in his name and for injunction. Share Transfer Form has been designed in the format wherein 10

share certificate details can be entered in the same Form. Hence the allegation made by the petitioner that there should be 40 transfer deeds instead of 8 transfer deeds is not correct. Respondent No.5 prayed that the shares may be ordered to be registered in his name and release the dividend in his name.

12. In the Rejoinders filed by the Petitioner to the Replies of Respondent No.1 and Respondent No.5, the same facts are reiterated. Along with the Rejoinder, Petitioner filed the information relating to the Share Transfer Agent mentioning the periods against their names.

13. Basing on the pleadings of the Petitioner, and the Respondents No.1, 2 and 5, the following point emerges for consideration.

13.1. Whether the Petitioner is entitled for a direction to the Respondents No. 1 and 3 to issue duplicate shares in respect of 21500 equity shares, i.e., 21000 shares under Ledger Folio No. 021673 and 500 equity shares under Ledger Folio No. 021674.

14. Admittedly, Petitioner is the shareholder of 21500 equity shares of 1<sup>st</sup> Respondent Company. Admittedly, in the year 2012, the 1<sup>st</sup> Respondent Company divided its equity shares from face value of Rs. 10 each to Rs. 2 each. As per the Register of Members maintained by 1<sup>st</sup> Respondent Company, the Petitioner holds a total number of 21500 shares of Rs. 2/- each (4300 shares of Rs. 10 each) under Folio No. 021673 and 20000 equity shares of Rs. 2 each (500 equity shares of Rs. 10 each) under Folio No. 021674. Admittedly, in September 2015 Petitioner applied to the 1<sup>st</sup> Respondent Company for issue of duplicate shares under both the folios. Admittedly, 5<sup>th</sup> Respondent filed an application with the 1<sup>st</sup> Respondent Company claiming 20000 equity shares of Rs. 2 each (4000





equity shares of Rs. 10 each) under Folio No. 021673 stating that he purchased the shares from the open market in the year 1997 and sent the transfer deeds to Pinnacle Shares Registry Pvt.Ltd., but not received duly transferred shares. Admittedly, as stated by the Petitioner in his Petition that there was a correspondence between him, Respondent No.3 and Respondent No.1. Admittedly, Petitioner is having knowledge about the claim of Respondent No.5 that he purchased all 20000 equity shares of Rs. 2 each (4000 equity shares of Rs. 10 each) of the 1<sup>st</sup> Respondent Company from the Petitioner under Folio No. 021673. However, the Petitioner is denying the sale of his shares to 5<sup>th</sup> Respondent. It is a fact that 5<sup>th</sup> Respondent also filed a Civil Suit, being TS No. 87/2016 on the file of Civil Court, Alipore claiming ownership for the disputed shares. The correspondence made by 1<sup>st</sup> Respondent with the Petitioner and 5<sup>th</sup> Respondent revealed that the 1<sup>st</sup> Respondent Company has asked the parties to settle the issue between themselves or produce an order from the competent Court of Law.

15. Now, coming to the reliefs prayed by the Petitioner, this Petition is filed under Sections 56, 58 and 59 of the Companies Act, 2013 ("the Act" for short). Section 58 of the Act reads as follows;

**"58. Refusal of registration and appeal against refusal.\_\_\_\_**

(1) *If a private company limited by shares refuses, whether in pursuance of any power of the company under its articles or otherwise, to register the transfer of, or the transmission by operation of law of the right to, any securities or interest of a member in the company, it shall within a period of thirty days from the date on which the instrument of transfer, or the intimation of such transmission, as the case may be, was delivered to the company, send notice of the refusal to the transferor and the transferee or to the person giving intimation of*



such transmission, as the case may be, giving reasons for such refusal.

(2) Without prejudice to sub-section (1), the securities or other interest of any member in a public company shall be freely transferable:

Provided that any contract or arrangement between two or more persons in respect of transfer of securities shall be enforceable as a contract.

(3) The transferee may appeal to the Tribunal against the refusal within a period of thirty days from the date of receipt of the notice or in case no notice has been sent by the company, within a period of sixty days from the date on which the instrument of transfer or the intimation of transmission, as the case may be, was delivered to the company.

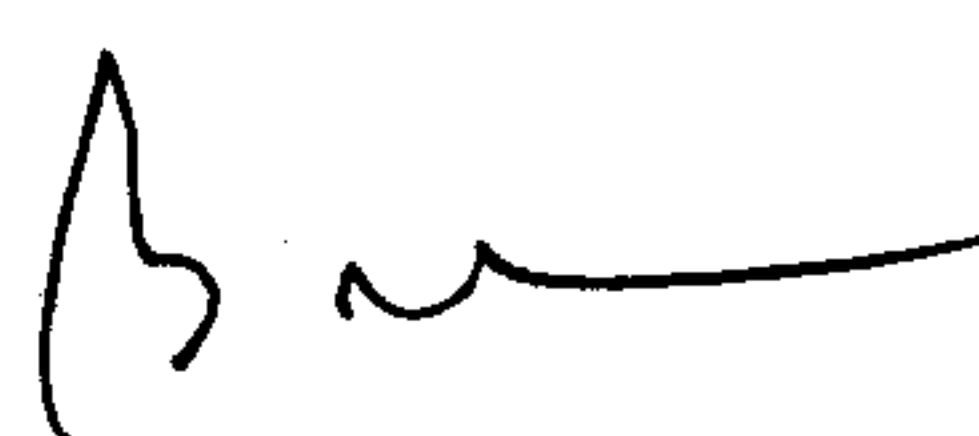
(4) If a public company without sufficient cause refuses to register the transfer of securities within a period of thirty days from the date on which the instrument of transfer or the intimation of transmission, as the case may be, is delivered to the company, the transferee may, within a period of sixty days of such refusal or where no intimation has been received from the company, within ninety days of the delivery of the instrument of transfer or intimation of transmission, appeal to the Tribunal.

(5) The Tribunal, while dealing with an appeal made under sub-section (3) or sub-section (4), may, after hearing the parties, either dismiss the appeal, or by order—

- (a) direct that the transfer or transmission shall be registered by the company and the company shall comply with such order within a period of ten days of the receipt of the order; or
- (b) direct rectification of the register and also direct the company to pay damages, if any, sustained by any party aggrieved.

(6) If a person contravenes the order of the Tribunal under this section, he shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to three years and with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.”

16. Section 58 of the Act can be invoked only in case of refusal of registration by the Company. Even according to the Petitioner it is not his case that the Company refused to register his name as a shareholder in the Register of Members.



17. Section 59 of the Act deals with the rectification of Register of Members if the name of any person is without sufficient cause entered into the Register of members of a Company or without sufficient cause omitted the name of a Member from the Register of Members or in case where a default was made or unnecessary delay was made in making entry in the Register of Members. The case of the Petitioner does not fall in any one of the categories enumerated in Section 59 of the Companies Act. Therefore, the relief prayed in this case does not come within the purview of Sections 58 and 59 of the Act.

18. Section 56 of the Act came into force with effect from 1.4.2014. Section 56 reads as follows;

**“56. Transfer and transmission of securities.\_\_\_\_**

(1) *A company shall not register a transfer of securities of the company, or the interest of a member in the company in the case of a company having no share capital, other than the transfer between persons both of whose names are entered as holders of beneficial interest in the records of a depository, unless a proper instrument of transfer, in such form as may be prescribed, duly stamped, dated and executed by or on behalf of the transferor and the transferee and specifying the name, address and occupation, if any, of the transferee has been delivered to the company by the transferor or the transferee within a period of sixty days from the date of execution, along with the certificate relating to the securities, or if no such certificate is in existence, along with the letter of allotment of securities.*

*Provided that where the instrument of transfer has been lost or the instrument of transfer has not been delivered within the prescribed period, the company may register the transfer on such terms as to indemnity as the Board may think fit.*

(2) *Nothing in sub-section (1) shall prejudice the power of the company to register, on receipt of an intimation of transmission of any right to securities by operation of law from any person to whom such right has been transmitted.*

(3) *Where an application is made by the transferor alone and relates to partly paid shares, the transfer shall not be registered, unless the company gives the notice of the application, in such manner as may be prescribed, to the transferee and the*



*transferee gives no objection to the transfer within two weeks from the receipt of notice.*

*(4) Every company shall, unless prohibited by any provision of law or any order of Court, Tribunal or other authority, deliver the certificates of all securities allotted, transferred or transmitted---*

- (a) within a two months from the date of incorporation, in the case of subscribers to the memorandum;*
- (b) within a period of two months from the date of allotment, in the case of any allotment of any of its shares;*
- (c) within a period of one month from the date of receipt by the company of the instrument of transfer under sub-section (1) or, as the case may be, of the intimation of transmission under sub-section (2), in the case of a transfer or transmission of securities;*
- (d) within a period of six months from the date of allotment in the case of any allotment of debenture;*

*Provided that where the securities are dealt with in a depository, the company shall intimate the details of allotment of securities to depository immediately on allotment of such securities.*

*(5) The transfer of any security or other interest of a deceased person in a company made by his legal representative shall, even if the legal representative shall, even if the legal representative is not a holder thereof, be valid as if he had been the holder at the time of the execution of the instrument of transfer.*

*(6) Where any default is made in complying with the provisions of sub-sections (1) to (5), the company shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees and every officer of the company who is in default shall be punishable with fine which shall not be less than ten thousand rupees but which may extend to one lakh rupees.*

*(7) Without prejudice to any liability under the Depositories Act, 1996 (22 of 1996), where any depositor or depository participant, with an intention to defraud a person, has transferred shares, it shall be liable under section 447."*

Reading of the above said Section discloses that where the instrument of transfer has been lost, the power to issue duplicate shares lies with the Board of the Company. There is nothing in Section 56 which indicate that this Tribunal can give a direction to the Company to issue duplicate shares. Section



46(2) of the Act says, that, “A *duplicate certificate of shares may be issued, if such certificate is proved to have been lost or destroyed; or has been defaced, mutilated or torn and is surrendered to the company.*” The corresponding Section in the Old Act is 84(4). Section 84(4) of the Old Act says the same thing which the Section 46(2) of the New Act says. Rule 4 of The Companies (Issue of Share Certificate) Rules, 1960 [“the Old Rules” for short] are framed in exercise of the powers conferred by clause (b) of sub-section (1) of Section 642 of the Companies Act, 1956.

19. In supersession of the said Rules from 1<sup>st</sup> April 2014, the Companies (Share Capital and Debenture) Rules, 2013 [“the New Rules” for short] came into force. Rule 6 of the New Rules deals with issue of renewed or duplicate share certificate. The above said provisions of the Companies Act, 1956; the provisions of the Companies Act, 2013; Rule 4 of the Old Rules and Rule 6 of the New Rules empower only the Board of the Company to issue duplicate share certificates in case where share certificates were lost.

20. In the case on hand, the Petitioner alleged that he lost share certificates but he did not state when he lost the share certificates. The fact remains that Respondent No.5 is claiming to have purchased 20000 equity shares of Rs. 2/- each (4000 equity shares of Rs. 10/- each) of the Petitioner under Folio No.021673. It is also a fact that 5<sup>th</sup> Respondent filed a suit in respect of those shares and it is pending before the Civil Court.

21. In view of the provisions of law and in view of the above stated facts, it is clear that it is the Board of the Company that has to issue duplicate share certificates in case if the shareholder satisfy the Board of the Company that he has lost

the shares. Petitioner before applying for duplicate shares did not give report to the police. Even after Petitioner came to know about the claim made by Respondent No.5 for 20000 equity shares of the face value of Rs. 2/- each, Petitioner did not choose to give any report to the police about the loss or misplacement of the shares. In view of the claim made by Respondent No.5 in respect of 20000 equity shares, the Board of the 1<sup>st</sup> Respondent Company is right in directing the rival parties, i.e., Petitioner and Respondent No.5 to settle the matter among themselves or to produce the order from the competent Court. The said communication was given by 3<sup>rd</sup> Respondent to the Petitioner by way of letter dated 30<sup>th</sup> September, 2015, Exhibit-C of the Petition. Thereafter only this Petition was filed before the Company Law Board. This Petition was numbered as 'Company Petition No. 1 of 2016' and later it was transferred to this Tribunal and renumbered as "TP No. 116 of 2016".

22. Now the crucial question is whether this Tribunal has got jurisdiction to pass any order in this matter or the parties have to be relegated to the Civil Court for appropriate reliefs.

23. As discussed earlier, there is no provision in the Companies Act, 1956 or in the Companies Act, 2013 or in the Old Rules or in the New Rules which specifically give an authority to this Tribunal to give directions to the Company to issue duplicate shares.

24. But it may be said that when the Company unjustifiably denies issuance of duplicate shares in a given case, even when there is a material for the Company to act, can it be said that this Tribunal cannot direct the Board of the Company to issue duplicate shares.



25. When the Statute creates a right to obtain duplicate shares upon satisfying the Board about loss of shares and when the Board did not exercise its discretion in the manner in which it is expected to exercise, then the judicial authorities or quasi-judicial authorities are certainly entitled to give appropriate directions.
26. In the case on hand, Petitioner did not place any material on record as to when he misplaced the share certificates or when he lost the share certificates. Petitioner did not even choose to give report to the police about the misplacement of shares. On the other hand, Respondent No.5 claimed that he purchased 20000 equity shares from the Petitioner as long back as in 1997 and produced transfer deeds before the Share Transfer Agent. In those circumstances the Board of the Company is right in not issuing duplicate shares to the Petitioner.
27. In this context, it is necessary to refer to the legal position on the aspect when there are complicated questions of law and facts are involved whether this Tribunal can pass orders or this Tribunal has to relegate the parties to the Civil Court. In ***Ammonia Supplies Corporation Private Ltd. V. Modern Plastic Containers Pvt.Ltd and Others***, reported in (1994) 79 CC Page 163, the Full Bench of the Delhi High Court held that “the object of Section 155 (now Section 111) of the Companies Act, 1956 is to provide a remedy in non-controversial matters or in matters where a quick decision is necessary and can be rendered in order to obviate irreparable injury to a party.”
28. The scope of Section 155 of the Companies Act came up for consideration before the Apex Court in the case of ***Ammonia Supplies Corporation Private Ltd. V. Modern Plastic***



**Containers Pvt.Ltd and Others**, reported in AIR 1998 SC 3153 which arose from the Judgment of the Delhi High Court Full Bench Judgment in the case of Ammonia Supplies Corporation Pvt.Ltd. (supra). The Hon'ble Supreme Court answered the following question, "Whether in the proceedings under section 155 of the Companies Act the Court has exclusive jurisdiction in respect of the matters raised therein or have only summary jurisdiction." In Para 27, the Hon'ble Apex Court observed that "The Court has to examine on the facts of each case, whether an application is for rectification, or something else." The Hon'ble Apex Court proceeded to observe, "So far exercising of power for rectification within its field there could be no doubt the Court as referred under section 155 read with section 2(11) and section 10, it is the Company Court alone which has exclusive jurisdiction." In Para 31, the following observations are also made;

*"So whenever a question is raised Court has to adjudicate on the facts and circumstances of each case. If it truly is rectification all matter raised in that connection should be decided by the Court under section 155 and if it finds adjudication of any matter not falling under it, it may direct a party to get his right adjudicated by Civil Court."*

Thereafter, the Hon'ble Apex Court has observed as under;

*"We have already held above the jurisdiction of the Court under section 155, to the extent it has exclusive jurisdiction of Civil Court is impliedly barred. For what is not covered as aforesaid the Civil Court would have jurisdiction."*

Therefore, it is clear from the Judgment of the Hon'ble Apex Court in *Ammonia Supplies Corporation Private Ltd.* (supra), insofar as matters of rectification are concerned, it is the Company Court only has jurisdiction. If issues which have to

be answered are not peripheral to rectification but issues regarding title, etc., then such other issues will have to be decided by the Civil Court. The Apex Court has now recognised that it is the Company Court which would be the Court of exclusive jurisdiction in so far as rectification is concerned. However, if issues arise, whether the applicant is the owner of the shares; whether there is fraud or forgery in holding the shares or the very title to the shares, then such issues will be beyond the jurisdiction of the Company Court and will have to be decided by the Civil Court.

29. It is pertinent to mention here that Section 155 of the Companies Act was omitted by the Companies (Amendment) Act, 1988 with effect from 31.5.1991 and it is in verbatim taken into Section 111 of sub-section (4) of the Companies Act, 1956. In fact, Section 111 is corresponding to Section 58 and 59 of the Companies Act, 2013.

30. Now in the case on hand, there is no specific provision in the Companies Act under which this Tribunal can give a direction to the Company Law Board to issue duplicate shares. However, when there is refusal on the part of the Board of the Company to issue duplicate shares if it is satisfied that the share certificates are lost or when such power is not properly exercised by the Board, it can be certainly be challenged. In the case on hand, the challenge involves title of the Petitioner to the extent of 20000 Equity Shares of Rs. 2/- each of the 1<sup>st</sup> Respondent Company.

31. Here it is pertinent to draw attention to the provisions of Section 430 of the Act. It says that "no Civil Court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Tribunal or the Appellate Tribunal is

empowered to determine by or under this Act or any other law for the time being in force...”

32. In the case on hand, the dispute is relating to the title of 20000 equity shares of Rs. 2/- each of 1<sup>st</sup> Respondent Company between the Petitioner and 5<sup>th</sup> Respondent. Such title disputes cannot be decided by the Company Law Tribunal and it can only be decided by a Civil Court. Section 430 of the Act only says that the Civil Court’s jurisdiction is ousted only in respect of matters which the Tribunal is empowered to determine. In the case on hand, in view of the complicated question of title to the disputed shares to the disputed shares between the Petitioner and the 5<sup>th</sup> Respondent is involved, this Tribunal cannot agitate upon the said issue. More so, there is no specific provision in the Companies Act which envisage the Tribunal to give a direction to the 1<sup>st</sup> Respondent Company to issue duplicate shares. It is already said that the relief sought by the Petitioner does not come under the provisions of Sections 58 and 59 of the Act.

33. Before parting with this Petition, it is necessary for this Tribunal to decide an application filed by 2<sup>nd</sup> Respondent vide IA No.9 of 2017. 2<sup>nd</sup> Respondent is a Company Secretary of the 1<sup>st</sup> Respondent Company. IA No.9 of 2017 is filed by the 2<sup>nd</sup> Respondent seeking an order to strike off his name from the array of the parties. It is stated by the 2<sup>nd</sup> Respondent that it has nothing to do with the inter se dispute between the Petitioner and 5<sup>th</sup> Respondent. It is his case that no relief is prayed against him and he is unnecessarily impleaded in this Petition.

33.1. In the Petition there are no allegation made against the 2<sup>nd</sup> Respondent. But in the Rejoinder filed by the Petitioner,

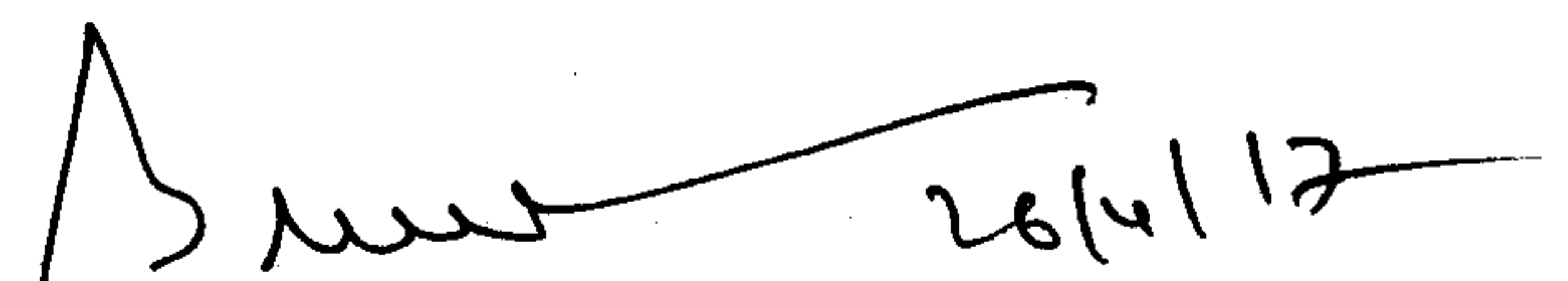


allegations were made against the 2<sup>nd</sup> Respondent that he colluded with the 5<sup>th</sup> Respondent and brought into existence some forged and fabricated documents.

33.2. No material is placed on record by the Petitioner to substantiate such wild allegations involving 2<sup>nd</sup> Respondent. More so, the Petitioner did not seek any relief against the 2<sup>nd</sup> Respondent. Moreover, there is no basis to grant any relief in this application against 2<sup>nd</sup> Respondent. More so, the Main Petition itself is misconceived, considering the prayer made by the Petitioner. Therefore, the Application No. IA No.9 of 2017 is closed in view of dismissal of TP 116/2016.

33.3. IA No. 49 of 2017 filed seeking adjournment is dismissed as infructuous.

34. In view of the above said findings, the Petition TP No. 116 of 2016 is dismissed. Both the parties are directed to bear their own costs. However, the parties are at liberty to agitate their rights in the Civil Suit which is already filed and pending or they may take recourse to another Civil Suit if so advised

  
**BIKKI RAVEENDRA BABU**  
**MEMBER JUDICIAL**

*Pronounced by me in open court  
on this the 26<sup>th</sup> day of April, 2017.*

By RMR, PS.