

**NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD**

CP No. 13/58,59/NCLT/AHM/2016

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 09.06.2017**

Name of the Company: M. Kondappa
V/s.
Symphony Ltd. & Ors.


Section of the Companies Act: Section 58,59 of the Companies Act, 2013

<u>S.NO.</u>	<u>NAME (CAPITAL LETTERS)</u>	<u>DESIGNATION</u>	<u>REPRESENTATION</u>	<u>SIGNATURE</u>
1.	Adv. Vaibhavi Nanavati	Advocate	Respondent	<i>V. J. Nanavati</i>
2.	Adv. Prachiti Shah	Advocate	Respondent	<i>P. Shah</i>

ORDER

None present for Petitioner. Learned Advocate Mrs. Vaibhavi Nanavati with Learned Advocate Ms. Prachiti Shah present for Respondents no. 1, 4 and 5.

Order pronounced in open Court. Vide separate sheet.


**BIKKI RAVEENDRA BABU
MEMBER JUDICIAL**

Dated this the 9th day of June, 2017.

**NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD**

C.P. No. 13/58, 59/NCLT/AHM/2016

CORAM: SRI BIKKI RAVEENDRA BABU, MEMBER JUDICIAL

(Date: 9th June, 2017)

In the matter of:

1. Mr. M. Kondappa,
(Shareholder of M/s Symphony Limited),
1-2-30, Ratna Enclave,
Nandamori Nagar,
Nizampet Road,
Hyderabad – 85.

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Petitioner

Versus

1. M/s Symphony Limited,
Regd. Office "Symphony House",
Third Floor, FP-12, TP-50,
Off S.G. Highway, Bodakdev,
Ahmedabad -380054.
2. M/s Karvy Computers share Pvt. Ltd.,
Karvy Selenium Tower B, Plot 31-32,
Gachibowli, Financial District,
Hyderabad – 500037.
3. M/s Sharepro Services (India) Pvt. Ltd.,
13AB, Samhita Warehousing Complex,
2nd Floor, Near Sakinaka Telephone Exchange,
Andheri-Kurla Road, Sakinaka,
Andheri East, Mumbai-400072.
4. Mr. Mayur Chimanbhai Barvadiya,
404, Vraj Vihar Tower, Opp. Shagun Casa,
Near Prerna Tirth Jain Temple,
Satellite, Ahmedabad-380015.
5. Mr. Manan Chandraprakash Bhavsar,
Former Company Secretary,
Symphony Limited,
104-A, Parmeshwar Avenue,
Vishwakarma Colony,
Gordhanwadi Tekra, Kankaria,
Ahmedabad – 380028.

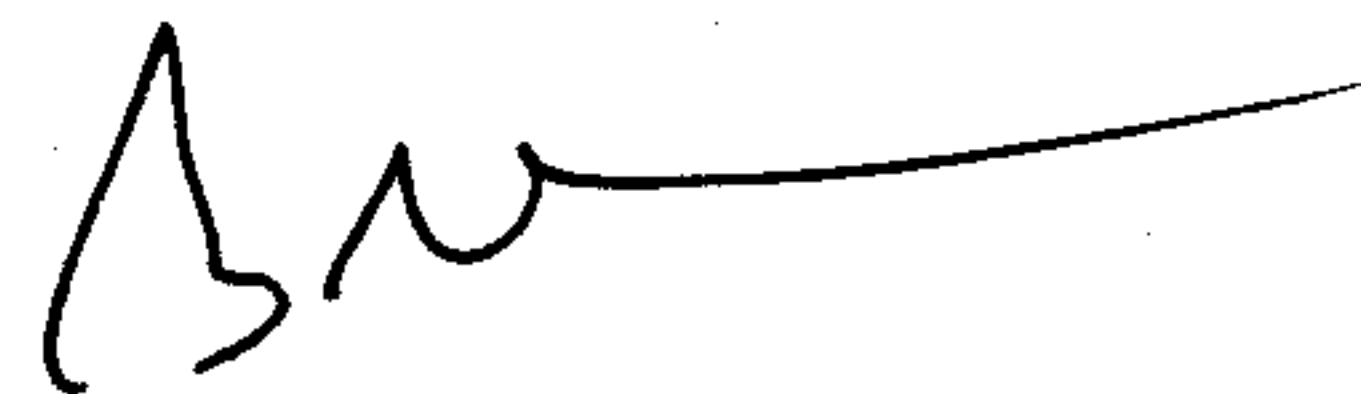
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Respondents

Appearance:

1. Mr. CS Rahul Sahasrabuddhe, PCS, for the Petitioner.
2. Mrs. Vaibhavi Nanavati with Ms. Prachiti Shah and Mr. Vandan Shah,
Advocates for Respondents Nos.1, 4 & 5.

FINAL ORDER
(Date: 09.06.2017)



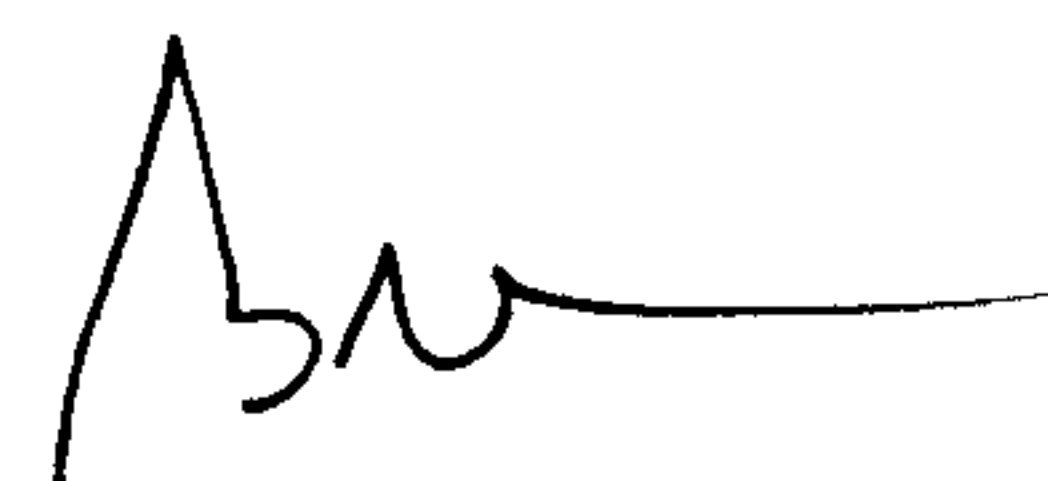
1. This petition is filed by the shareholder of M/s Symphony Limited, seeking direction/order to the company and to the Transfer Agent to issue duplicate shares in respect of the 5000 equity shares of the first respondent company and for release of all benefits like bonus shares, etc. and to pass appropriate orders under Sections 58 and 59 of the Companies Act, 2013 and Rule 70 of the National Company Law Tribunal Rules, 2016.
2. The facts, in brief, that are germane for the disposal of this petition are as follows: -
3. The first respondent company is a company registered under the Companies Act, 1956, initially, as a private limited company and, thereafter, converted into a public limited company. The registered office of the first respondent company is situated at Symphony House, Bodakdev, Ahmedabad, Gujarat. The second respondent is the Share Transfer Agent of the first respondent company with effect from 1.4.2016. The third respondent was the Share Transfer Agent of the first respondent company from 1st March, 2010 to 31st March, 2016. The fourth respondent is the present Company Secretary of the first respondent company whereas the fifth respondent is the erstwhile Company Secretary of the first respondent company.
4. The petitioner was originally holding 1000 equity shares of Rs.10/- each of the first respondent company. Later, the shares were sub-divided by dividing one equity share of Rs.10/- each to 5 equity shares of Rs.2/- each, as per the Board resolution dated 29.07.2011 and, thereby, the shareholding of the petitioner, as per the Register of Members of the first respondent company, as on 30th June, 2015, was 5000 equity shares.
5. According to the petitioner, the shares of the petitioner were misplaced. The petitioner, therefore, by his letter dated

12.05.2016, requested the second respondent for issuance of duplicate shares. The second respondent, by its letter dated 9.7.2016, asked the petitioner to produce documents to show that the petitioner is a shareholder of the first respondent company. The petitioner sent all the requisite documents as required by the second respondent on 12.9.2016. But respondents 1 and 2 have not taken any action on the request of the petitioner. Meanwhile, the first respondent issued bonus shares in its Annual General Meeting held on 31st August, 2016 in the proportion of 1 fully paid bonus equity share of Rs.2/- each for every existing one fully paid equity share of Rs.2/- each held by the existing members of the company, thereby the petitioner has become entitled to receive 5000 bonus equity shares of the first respondent company. However, no such bonus shares were provided to the petitioner. The petitioner by his letter dated 28.9.2016 informed respondents 1 and 2 about the non-receipt of bonus shares, for which no response was given by the respondents. On the other hand, on 5.10.2016, the first respondent company sent a letter confirming the status of the petitioner as bona fide registered shareholder of the company. But, in the same letter, the first respondent stated that respondent No.3, who was the earlier Share Transfer Agent of the first respondent company indulged in certain illegal activities by transferring and dealing in the shares of the first respondent company. It is also stated in the letter of the first respondent company that SEBI instituted *suo motu* proceedings against the third respondent under various provisions of the SEBI Act, 1992. The order passed by SEBI on 22nd March, 2016 clearly indicates that the third respondent deals in the shares of the first respondent company fraudulently and in bad faith. In the same letter, the first respondent company informed the petitioner that his shares were transferred to a person by name Rajgopal BV on 10.12.2015 and the said shares are in the list of "suspicious transfers" that were made during the tenure of the third respondent as Transfer Agent of the first respondent

company. It is stated by the petitioner that the shares of the petitioner were fraudulently transferred by some unknown person named Rajgopal BV without any valid documents by the third respondent in connivance with other respondents. The petitioner alleged that the first respondent company, instead of co-operating with the petitioner, is creating hurdles in the way of the petitioner in obtaining duplicate share certificates.

6. The first respondent admitted that the third respondent was its Share Transfer Agent from 1.3.2010. It is the plea of the first respondent company that when the petitioner claims to have lost his shares or misplaced his shares, it was incumbent upon him to lodge a complaint with police, but the petitioner has not taken such steps. From the documents provided by the third respondent to the first respondent company, it appears that the petitioner has transacted his shares way back in the year 1998, whereby one Rajgopal BV has purchased the shares of the petitioner through a broker by name M/s Taneja State Company. Therefore, at that point of time, the first respondent company had every reason to believe that the petitioner would have signed a transfer form prevailing then. In December, 2015, Mr. Rajgopal BV presented the shares for transfer along with transfer form signed by the petitioner, which is of the year 1998. These facts were stated in the report of Ernst & Young, Auditors appointed by the first respondent company for conducting special audit of the transactions handled by the third respondent. At present, investigation is being carried on against the activities of the third respondent by SEBI. Till such investigation is concluded, this Tribunal may not pass any order with regard to the issuance of duplicate shares. On 10th December, 2015, the shares of the petitioner were transferred to Mr. Rajgopal BV. Thereafter, Mr. Rajgopal BV got converted such shares into dematerialized form and transacted further. No doubt, the internal audit conducted by the first respondent

company reveals that the said transaction is one of the suspicious transactions handled by the third respondent. It is a fact that the first respondent company issued bonus shares in September, 2016, by which date the petitioner was not a shareholder and, therefore, bonus shares were not issued to the petitioner. The first respondent company took a plea that non-joinder of Mr. Rajgopal BV renders the petition not maintainable. It is also the plea of the first respondent that for the illegal acts, if any, committed by the third respondent, the first respondent company cannot be held vicariously liable. According to the first respondent, if at all the petitioner is able to establish that he had not entered into any transaction in respect of his shares with Mr. Rajgopal BV, the remedy for the petitioner is against the third respondent and that too in a civil proceeding, but not before this Tribunal. Further, it is stated in the reply that the petitioner already lodged a complaint with SEBI on 18.10.2016 seeking release of dividend in respect of his shareholding, but the said fact has not been disclosed by the petitioner in the petition and, thereby, the petitioner has suppressed the material facts. Respondents 4 and 5 also filed reply stating almost the same facts that were stated in the reply of the first respondent company. It is stated by the Company Secretary that they were not required to examine the genuineness or otherwise of every transfer form submitted by the shareholders. The company obtained certificate as required by clause (9) of Regulation 40 of the SEBI Regulations from the Company Secretary for the period from 1.10.2015 to 31.3.2016 and, therefore, the company was not at fault. Respondents 4 and 5 stated that while issuing the new certificates, the old certificates were never called back by the company and it was resolved by the company that upon issuance of new share certificates, the old certificates would automatically stand cancelled.

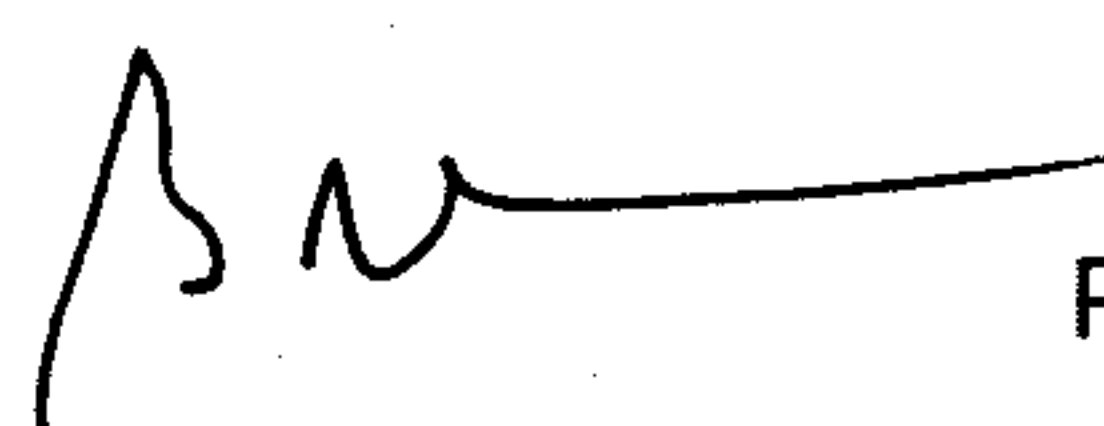


7. In the rejoinder, the petitioner stated that the first respondent company never provided the address of Mr. Rajgopal BV. It is also stated in the rejoinder that the Register of Members is conclusive evidence as to the shareholding of a member of a company. In the rejoinder, the petitioner referred to the interim order passed by this Bench on 23.11.2016 freezing all transactions in respect of the shares in Folio No.024442 owned by the petitioner and all consequential benefits arising therefrom till the disposal of the petition. According to the petitioner, as on 30.6.2015, his name appears as Member of the Company and the interim order would come to his rescue. The Company Secretary, at that point of time, failed to mention in the Annual Report about the suspicious transfer of shares as on 31st December, 2015, 31st March, 2016 and 30th June, 2016.

8. This petition is filed under Sections 58 and 59 of the Companies Act, 2013 and Rule 70 of the National Company Law Tribunal Rules. But the relief sought in the petition relates to issuance of duplicate shares. Section 56 of the Companies Act, 2013, which came into force with effect from 1.4.2015, reads as under :-

“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.

9. In supersession of the said Rules from 1st 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.

10. In the case on hand, the petitioner alleged that his shares were misplaced. The petitioner did not choose to state either in the petition or in the rejoinder as to when he came to know that this shares were misplaced. From the pleadings of the first

respondent company, it appears that the petitioner entered into a sale transaction of his shares with Mr. Rajgopal BV in the year 1998 and those shares were presented by the third respondent before the first respondent company for effecting transfer in the year 2015 and, accordingly, the shares were transferred in the name of Mr. Rajgopal BV on 10th December, 2015.

11. In view of Section 56 of the Companies Act, 2013 and the Companies Share Capital and Debenture Rules, 2013, the petitioner is entitled for issuance of duplicate share certificates in case the shareholder satisfies the Board of the company that he has lost his shares. The petitioner in this case, before the filing of this petition seeking relief of duplicate shares, did not give report to police. Even after the petitioner came to know that his shares were transferred to Mr. Rajgopal BV, he did not choose to give any report to police. Therefore, the petitioner is not entitled to duplicate shares.
12. Now, coming to the reliefs claimed under Sections 58 and 59 of the Act, it is necessary to find out whether the petitioner is entitled to the relief under Section 59. Section 59 of the Act deals with the rectification of register of members, if the name of any person, 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.
13. It is contended by the learned counsel for the petitioner that transferring of his shares to the name of Mr. Rajgopal BV amounts to deleting or omitting the name of the petitioner from the register of members without sufficient cause.



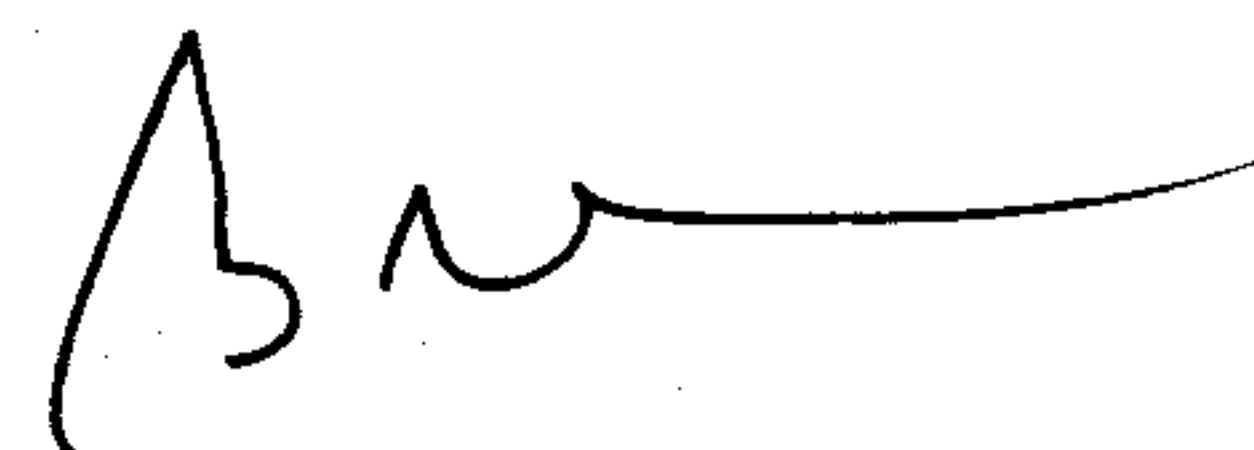
14. The crucial question is whether the transfer of shares of the petitioner to Mr. Rajgopal BV amounts to transfer without sufficient cause or not.
15. There is no dispute about the proposition of law that shares cannot be transferred from one person to another person without producing a duly signed transfer form accompanied by original share certificates. In the case on hand, the first respondent company, when it received the share transfer form, which was of the year 1998, from its Transfer Agent (the third respondent), was under the impression that the share transaction took place between the petitioner and Mr. Rajgopal BV in the year 1998 and those transfer forms were placed for effecting transfer in the year 2015 before the company. Therefore, it cannot be said that without sufficient cause the name of the petitioner has been omitted from the register of members. The name of the petitioner was omitted from the register of members on a belief that the petitioner entered into a share transaction and on the basis of share transfer form produced by the Transfer Agent of the first respondent company. Therefore, it can be straightaway said that there is a title dispute between the petitioner and Mr. Rajgopal BV. It has to be determined whether the share transfer form was duly signed by the petitioner or not or whether the share transfer is a fraudulent transaction or not. Unless and until the said issue is decided, it is not possible for this Tribunal to decide the controversy.

In this context, it is necessary to refer to the decisions relied upon by the learned counsel for the petitioner. In ***Madhava Ramachandra Kamath v. The Canara Banking Corporation reported in (1940) MLJ 721***, the petitioner, a shareholder, who was having one share, took recourse to law unjustly for filing a complaint to the District Magistrate seeking sanction to prosecute some of the Directors and Ex-Directors of

the company alleging conspiracy in preparation of balance sheet of the company. The company in a meeting resolved to expel the petitioner from the membership of the Corporation. Thereafter, the Articles of Association of the company was amended inserting an article which gives authority to the company to forfeit the shares of the expelled member. In those set of facts, it was held by the Madras High Court that striking out the name of the petitioner from the register is an omission of his name from the register of members within the meaning of the Section. In that decision, the argument of the learned counsel for the company that the transferee was not added as a party did not find favour with the Honourable High Court on the ground that the share of the petitioner had not been transferred to any person validly and, therefore, the petitioner was still the holder of the share. In that case, it was held that the share of the petitioner was not validly transferred on the basis of interpretation that forfeiting the shares of an expelled member was not valid.

In the case on hand, the shares of the petitioner were transferred to Mr. Rajgopal BV on the basis of a share transfer form, which may be genuine or may not genuine. Therefore, the said decision is not applicable to the facts of the present case.

16. Learned counsel for the petitioner relied upon the decision in ***Mannalal Khetan v. Kedar Nath Khetan & Ors., reported in 1976-(CC2)-GJX-0067-SC.*** In that case, shares were transferred without proper instrument of transfer. In the case on hand, the shares were transferred on a proper instrument of transfer, but the question whether the petitioner, in fact, transferred the shares or not in the year 1998. Therefore, that decision is not applicable to the facts of this case.



17. In **Ms. Sulochana Neelkanth Kalyani v. M/s Takle Investments Company & Ors.**, reported in 2016-(CC1)-GJX-0014-BOM and **Peoples Insurance Co. Ltd. v. C.R.E. Wood And Co. Ltd. & Ors.**, reported in AIR 1960 PH 388, relied upon by the learned counsel for the petitioner, shares were transferred without a transfer instrument. In fact, in the decision in **Peoples Insurance Co. Ltd.**, reported in AIR 1960 PH 388, there was reference to other decisions of Punjab & Haryana High Court and it was held that providing summary remedy was not suitable in those cases. In those facts and circumstances of the cases, the Honourable High Court of Punjab & Haryana held that where serious disputes were involved, the proper forum for their adjudication is the civil court. But in that case, it was held that summary remedy can be exercised depending upon the facts of the case.

18. 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."

19. 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 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) that, 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.

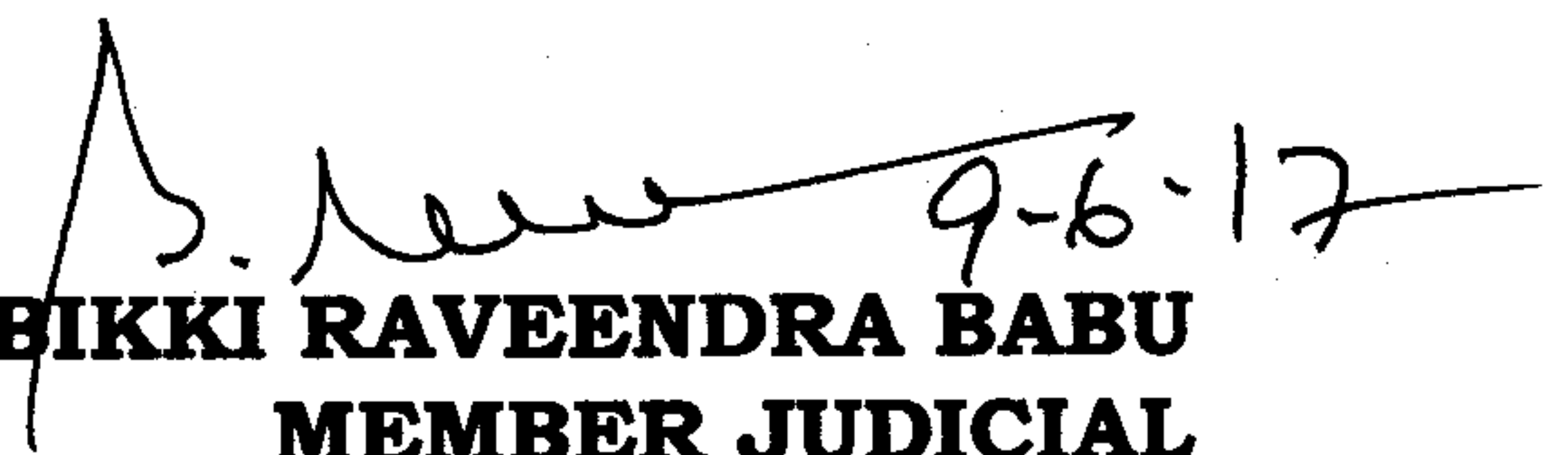
20. It is pertinent to mention here that Section 155 of the Companies Act was omitted by the Companies (Amendment) Act, 1988 with effect from 31.5.1991 and it is in verbatim taken into Section 111 of sub-section (4) of the Companies Act, 1956. In fact, Section 111 is corresponding to Section 58 and 59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

21. 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 Board of the Company to issue duplicate shares. However, when there is refusal on the part of the Board of the Company to issue duplicate shares, if after it was satisfied that the share certificates were lost or when such power was not properly exercised by the Board, it can certainly be challenged. In the case on hand, the challenge involves title of the Petitioner to the extent of 5000 Equity Shares of Rs. 2/- each of the first respondent company.

22. In the case on hand, there is a dispute whether the shares of the petitioner were, in fact, transferred by the petitioner in the year 1998 or not. On the basis of a transfer form, the shares were already transferred to Mr. Rajgopal BV. Therefore, the issue involved in this case is a disputed question of facts. Moreover, in this case, investigation by SEBI is also pending

relating to certain suspicious share transactions that were undertaken by the third respondent and the transfer of shares of the petitioner is one such case. Therefore, pending investigation by SEBI also, it is not proper for this Tribunal to decide the issue. Further, the petitioner did not choose to disclose in the petition that he has already approached SEBI for issuance of duplicate shares and the matter is pending there. It amounts to suppression of material fact since the order, if any, passed may be or may not be in consonance with the order, if any, passed by this Tribunal in this proceeding. Therefore, it is a fit case where the petitioner can approach the civil court. Further, the petitioner did not choose to implead the transferee of shares by name, Mr. Rajgopal BV, as a party to this petition. Any order of rectification of the register passed in this proceeding would have a direct effect on the interest of Mr. Rajgopal BV. Therefore, Mr. Rajgopal BV is not only a proper party, but also a necessary party to this proceeding. But, such person has not been impleaded as a party in this petition.

23. In view of the above discussion, the petitioner is not entitled to any relief in this petition. This petition is dismissed. However, the petitioner can approach the civil court for appropriate remedies, if so advised. The interim order passed by this Bench on 23.11.2016, freezing all transactions in respect of the shares in Folio No.024442 owned by the petitioner and all consequential benefits arising therefrom till the disposal of the petition, is vacated. No order as to costs.


BIKKI RAVEENDRA BABU
MEMBER JUDICIAL

Pronounced by me in open court
on this 9th day of June, 2017.

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