

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH, MUMBAI
COMPANY PETITION NO.33/58,59/CLB/MB/2013

In the matter of Section 111-A of the Companies Act, 1956

AND

In the matter of Oriental Insurance Co. Ltd.

AND

M/s. Lupin Laboratories Limited & Others

CORAM:

SHRI M.K. SHRAWAT
MEMBER (JUDICIAL)

In the matter of:-

M/s. Oriental Insurance Co. Ltd.,
Divisional Office No.4 at Magnet House,
Ballard Estate,
Mumbai - 400 001.

..... Petitioner

Versus

M/s. Lupin Limited,
CST Road, Kalina,
Santacruz (East),
Mumbai - 400 098.

..... Respondent

Represented by :-

Shri P.S. Gupchup,
Practicing Company Secretary : For Respondent No.1

Shri Kamal Agarwal
Chartered Accountant : For Petitioner

Phool Chand Jangid
With i/b
Raymond Co. : For Respondents No.3

ORDER DATED 03.07.2017

1. The petition under consideration was filed on 2nd December 2013 before the erstwhile CLB and thereafter stood transferred to NCLT, Mumbai Bench. The Petitioner has moved this Petition by invoking the provisions of section 111-A of the Companies Act 1956.
2. **BACKGROUND & RIVAL CLAIMS :-** The Petitioner company is incorporated under the Insurance Act as a subsidiary of General Insurance Corporation of India. Respondent No.1 is Lupin Laboratories Limited (hereinbelow in short referred as LLL) is a company incorporated under the Companies Act. Respondent No.2 is a company incorporated under the Companies Act and a Member of the National Stock Exchange also registered with SEBI, **purchased an insurance policy from the Petitioner** (hereinbelow referred as **"the Insured"**). Respondent No.3 is an individual resident of Jaipur claiming bona-fide purchaser of the shares in dispute. Respondent No.4 is

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a company under Companies Act alleged to be the original transferor of the 100 shares of LLL(R-1) .

3. Petitioner being an Insurance Company has insured Respondent No.2 being a insurance policy holder of the petitioner, wherein the insurance company had agreed to indemnify "the insured" for loss, if any, including the loss of security in transit or loss from office till the time the transaction is settled in physical form with National Stock Exchange (NSE). As per the petition **"the insured"(R-2) purchased 400 shares on behalf of its clients through NSE during the period of 3rd July to 9th July 1996 and another period of 7th August 1996 to 13th August 1996.**

It was claimed that on completion of settlement NSE had issued delivery statement in the name of the 'insured' by collecting the delivery of certificates of 400 shares from the clearing house of NSE. Further claimed that "The insured" (R2) paid the consideration for 400 shares and obtained the delivery of certificate along with transfer deeds duly executed by the transferors. Details of 400 shares describing certificate no./DNR are also part of the petition. Those original share certificates along with transfer deeds were kept in the office of "the insured". The case of the Petitioner is that those share certificates got lost from the office of "the insured" (R2). **The R2 had written a letter to LLL (R1) on 22nd of October 1996** intimating the loss of shares with a request to mark "stop transfer".

- 3.1. In reply to the said letter of October 1996 of R2 the (R1) LLL through a letter of 30th October 1996 had intimated that out of 400 shares lost, a transaction took place of 100 share certificates bearing no.32112. **R1 had intimated that in respect of 100 share certificates a claim of transfer was lodged by one Mr. Omprakash Sharma (R3).** It was intimated that the documents of R3 were complete and in the absence of "stop mark" on that point of time, the company had effected the transfer of shares. There is a mention of filing of a separate petition in CLB in respect of rest of the 300 shares by the petitioner. It is worth to mention at this juncture that the said Petition was allowed vide Order dated **10th June 2014 (Company Appeal No. 37 of 2013) under Section 111A , 1956 Act r/w Sec. 58 & 59 of 2013 Act in favour of The Oriental Insurance Company in respect of 300** shares of Lupin Ltd. There is also a reference of a complaint with the police but apart from a certificate copy issued, no other evidence is in respect of the result of any investigation. There is also a reference of a civil suit filed on 20th November 1996 by "the insured", that too is stated to be a civil suit before the court, wherein LLL was restrained from transferring the shares.

- 3.2. Under the terms of the insurance policy the Petitioner had paid a sum of Rs.7,40,215/-, a claim of compensation to "the insured" (R2). In lieu a **"subrogation cum special power of Attorney"** was executed in favour of the Petitioner on **18th October 1997**. The claim of the Petitioner is that on account

of the execution of the said deed, the Petitioner as an Insurance Company had obtained all rights, title, interest, in respect of shares of 19 companies including full shares of LLL. An allied information is also placed that certain development took place in the arrangement of shares in LLL as well as a scheme of amalgamation was also approved according to which LLL got amalgamated with Lupin Chemicals Limited, approved by the Hon'ble Bombay High Court order dated 13.06.2001. In terms of the said scheme on the fixed record date 30th July 2001 against 100 original shares of LLL; 120 shares were allotted.

3.3. Admitted factual position as per the Petitioner was that R1 (LLL) had allotted 120 shares certificate in the name of R3. Later on in the year 2006, R1 (LLL) further proposed allotment of bonus shares in the ratio of 1:1. There was also a proposal of split of denomination from Rs.10/- to Rs.2/- each. As a result, 1200 shares of Rs.2/- each got allotted in the name of R3 of M/s. LLL (Respondent No.1). In short, 100 stolen shares of LLL got transferred in the name of R3 and have become holder of 1200 shares of Rs.2/- each. The Petitioner has raised a grievance in the Petition and thereupon praying for the relief as under:-

"The Petitioner is therefore entitled for an order from this Hon'ble Board declaring the transfer of 100 original stolen shares of LLL bearing certificate no.32112 from the name of Respondent No.4 to the name of Respondent No.3 null and void and thereby cancelled and further declaring allotment of 120 shares of Respondent No.1 bearing certificate no.36501 (DNR 3118927 to 3119046) as cancelled. The Petitioner is also entitled for an order from this Hon'ble Board declaring the allotment of 120 bonus shares bearing certificate no.58432 in the name of Respondent No.3 as cancelled and consequently issuance of certificate of 1200 shares of Rs.2/- each bearing certificate no.10257 (DNR 1791101 to 1792300) as cancelled."

"That the Hon'ble Company Law Board be pleased to pass an order of rectification directing Respondent No.1 to rectify its Register of Members by inserting the name of the Petitioner as holder of 1200 shares of Rs. 2/- each bearing certificate no.10257 (DNR 1791101 TO 1792300) by deleting the name of Respondent No.3. The Hon'ble Board be further pleased to direct Respondent No.1 to cancel the certificate of 1200 shares standing in the name of Respondent No. 3 and issue new share certificates for the said 1200 shares in the name of the Petitioner. Respondent No.1 be directed to release all dividend lying with them as unpaid and any other benefit."

4. CONTESTED BY RESPONDENT No. (3) :-

In this case out of total Four Respondents only Respondent No.3 Mr. Om Prakash Sharma, is the affected party because the shares stood transferred by LLL (R1) which were alleged to have been

stolen from the office of R2 (LINN Financial Services). Moreover, R3 is also the beneficiary of all dividends and benefits given by LLL (R1) to its shareholders. Therefore, Respondent No.3 has vehemently contested the Petition and filed a reply, the contents are to be discussed as below.

- 4.1 Respondent No.3 has stated that **100 shares of R1 bearing certificate No.32112 were purchased for a consideration of ₹14,457/-, however a cheque dated 18/7/1996 of ₹23,713/- was issued as per the settlement of account with the broker K.C. Goenka & Co. which was cleared by State Bank of Bikaner & Jaipur on 26/07/1996, thereafter, those shares were transferred on 25-09-1996 in his name.**
- 4.2 Respondent No.3 has raised serious suspicion on the statement of Respondent No.2 (LINN) that the shares "got lost" from the office.
- 4.3 That the Petitioner had no legal right to file any suit for injunction specially when the answering Respondent had not been made party to the suit.
- 4.4 That the Respondent being the owner strongly object the action of the Respondent No.2 of getting the 100 shares insured by the Petitioner and claiming the compensation on loss in the capacity of "insured". According to the answering Respondent No.3; the Respondent no.2 had no right as "insured" to execute any document of '**Subrogation**' or Special Power of Attorney **dated 18th October 1997**. However the strong contention is that the shares already got transferred in favour of R3 by R1 (LLL) on **25-09-1996**. So, R3 is contesting the legality of the letter of subrogation.
- 4.5 That the Respondent No.3 is placing reliance on the "Deed of Transfer of Shares" according to which shares under consideration were transacted and changed hands from one party to another, viz., the **First** owner was Astro Investment Trading Company, **Second** was Empire Credit Ltd. (NSE Code No.06527, SEBI Regd No. INB230653732, Dated 15th July 1996 and **Third** was LINN Financial Services Ltd. (SEBI Regn. No. INB-230884438) and **Fourth** was NCM Neha Securities Ltd. Dated 26th July, 1996, **Fifth** was Saaketa Consultants Ltd. (INB-230759834/NSE) dated 29th July, 1996, **Sixth** was View Point Sec. Pvt. Ltd, Jaipur, **Seventh** was K.C. Goenka & Co. These transfers were blank one and Respondent No.2 and Petitioner knew it fully well as per the company record and register.
- 4.6 That Respondent No.3 has further stated that 100 shares were purchased from K.C. Goenka & Co., Jaipur vide Bill No. S/00027 CLG No.96-16 dated 03-08-1996.
- 4.7 That the Respondent No.3 Mr. Sharma has objected that the "Insured" (R2) M/s LINN Finance, had no right to obtain insurance of the shares purchased by the R3. Further R-2 had no right to lodge an insurance claim with the Petitioner when the shares were owned by the Respondent No.3. Even the Petitioner had no right to insure a property which was not in possession of the "insured". The Insured (R2) has illegally executed subrogation cum special power of Attorney dated 18-10-1997 in favour of the

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Petitioner. The impugned shares were already transferred in favour of R3 on 25-09-1996. After the legal transfer of those shares it was void and illegal to execute a subrogation deed on 18-10-1997.

- 4.8 That the Respondent No.3 has made a claim that he is the actual bona fide owner hence entitled for the allotment of the bonus shares as well as other benefits given by the Respondent-1 company. It is further pleaded that there ought not to be any question of issuance of duplicate share certificates when the original share certificates are lying with Respondent No.3. This Petition, according to R3, was filed by the Petitioner in collusion with R2 mala fide.
- 4.9 It is informed by the Respondent No.3 that the "Deed of Transfer" of shares is without any doubt that the **First** owner was Astral Investment and Trading Co. Pvt. Ltd. The **Second** owner was Empire Credit Limited as per the noting on the reverse of the Deed of Transfer wherein recorded the date of transfer as 15th July 1996 (Page-19 of Reply of R3). The **Third** owner was LINN Financial Services and **Fourth** was Neha Securities Limited from 26 July 1996, **Fifth** owner was Saaketa Consultants, **Sixth** was View Point Sec. Pvt. Ltd., Jaipur and **Seventh** was K.C. Goenka & Co. The Respondent No.3 has therefore purchased the shares from KC Goenka & Co. duly recorded in the transfer deed. The sale was valid and good in the eyes of law therefore Respondent No.3 has vehemently pleaded to affirm the transaction of R3 and dismiss the Petition. Certain evidences such as share transfer form of Lupin Laboratories Limited, Bank extract, copy of ledger account of R3 are placed in support of the plea.
5. From the side of the Petitioner, Learned Counsel appeared and pleaded that the Respondent No.2 was the bona fide purchaser as is evident from the evidence on record. On examination of the correctness of the purchase of shares the Insurance Company (Petitioner) had executed Subrogation-cum-Special Power of Attorney on 18th October, 1997. Due to loss of share and after that the claim on 100 shares by Respondent No.3 is the bone of contention. He has pleaded that the evidence on record can demonstrate that R3 had purchased stolen property (Shares) hence in terms of section 27 of Sales of Goods Act a buyer of stolen property never gets title over the impugned property, what to say, better title than the bona fide purchaser. Respondent No.2 on the other hand was the bona fide purchaser of 100 shares of LLL as per the settlement executed during the trading period from 3rd July 1996 to 9th July 1996, for which the pay-in date was 15th July, 1996. He has informed that NSE Clearing House has completed the pay-out on 17th July 1996. He has further argued that Respondent No.3 has himself admitted that 100 shares were purchased on 3rd August 1996, i.e. after Respondent No.2 had lost those shares. According to him the culprit who had stolen the shares had re-introduced the stolen shares back into the market. Though stolen shares were traded and reached in the hands of Respondent No.3 through broker M/s. K.C. Goenka. In support of the Subrogation Agreement and

to contest the mala fide of the transaction of the stolen property submitted few case laws listed as below:-

1. Oriental Insurance Co. Ltd. **Vs.** MRF Ltd. {[2007]78SCL 124[CLB]}
2. Finolex Industries Ltd. **Vs.** Anil R. Chhabra {2000(3) Bom CR 644}
3. Khurshid Alam **Vs.** P. Pagnon Company Pvt. Ltd. {2002 Comp Cas 523}
4. Oriental Insurance Co. Ltd. **Vs.** Lupin Ltd. CLB Mumbai Company Appeal No.37 of 2013, Order dated 10-06-2014;
5. Oriental Insurance Co. Ltd. **Vs.** Nestle India Pvt. Ltd., CP No.19/59/2014, Order dated 27-11-2015.
6. From the side of the Respondents main contestant is Respondent No.3 who has filed reply to the main Petition along with annexures in an attempt to prove that the purchase made by him of 100 shares was a bona fide purchase. According to him 100 shares of Lupin Limited were purchased bearing certificate No.32112 which were also transferred in his name on 25-09-1996. He has pleaded that if a purchase had already been finalised on 25-09-1996, then why Deed of Subrogation was executed on 18-10-1997. He has also informed that the original share transfer form was very much in possession and duly executed on the reverse side by the last broker in his name. He has further informed that 100 shares of Lupin were purchased by K.C. Goenka & Co. as per bill dated 03.08.1996 for a consideration of ₹14,300 as per the prevailing rate of ₹143 per share. There was one more delivery of shares on 03.08.1996 of Masco Pharma for a consideration of ₹9,125/- hence a consolidated cheque of ₹23,713 (inclusive of brokerage and Service Tax) was cleared from the Bank account of R3 maintained in State of Bikaner & Jaipur. He has alleged that the Subrogation Agreement was executed in connivance hence the claim of the Petitioner deserves to be dismissed. Reliance was placed on the following decisions:-
 1. M.S. Madhusoodhanan and another **Versus** Kerala Kaumudi Pvt. Ltd. And Others {AIR 2004 S.C. 909};
 2. Peerless General Finance & Investment Co. Ltd. **Versus** Poddar Projects Ltd. And another {2007(2)SCC 431};
 3. Stock Exchange Bombay **Versus** V.S. Khandalgaonkar & Ors.{AIR 2015 SC 193};
 4. Life Insurance Corporation of India **Versus** Escorts Ltd. And Others {AIR 1986 SC 1370};
 5. Vasudev Ramchandra Shelat **Versus** Pranlal Jayanand Thaker and Others {AIR 1974 SC 1728}
 6. Indian Bank **Versus** The Official Liquidator, Chemmeens Exports (P) Ltd. And Others {AIR 1998 SC 211}
- 7 M/s. Ammonia Supplies Corporation (P) Ltd. **Versus** M/s. Modern Plastic Containers Pvt. Ltd. And Others {AIR 1998 SC 3153}

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8. Arjansingh Bir Singh **Versus** Panipat Woollen and General Mills Co. Ltd. And Others
{AIR 1963 Punjab 341}

7. FINDINGS :- Parties heard at length. Case record thoroughly perused. Evidences are examined. Case laws cited by the respective sides are studied. In such cases where the rival claims are made in respect of ownership of shares the documentary evidence play an important role. In earlier days the problem of loss of shares was rampant. Number of complaints were in existence. The physical delivery had created number of glitches. To overcome all such complications the system of 'Dematerialisation' evolved. Issue in this case is of that era when the system of DMAT was in its nascent stage. Difficulty cropped up due to alleged loss of shares certificates. On one hand the allegation is that the shares were misplaced / stolen from the office of the share-broker and on the other hand the claim of R3 is that considering the share transfer form and the surrounding evidences he happened to be a bona fide purchaser.

7.1 Before we proceed further it is worth to mention that an order of the then CLB dated 10.06.2014 (Company Appeal No.37 of 2013) is referred wherein the Petitioner and the Respondent are identical. However, in that case the Respondent No.1 along with other Respondents did not include the name of Respondent No.3. The said order was in respect of 300 original shares of Lupin Limited. In para 2.7 & 2.8 of the said order it was clarified by the Respected Member (Judicial), CLB as under:-

"2.7. That in response to the Insured's letter dated 22nd October 1996, LLL by their letter dated 30th October 1996 intimated that out of 400 shares lost by the Insured, certificate of 100 shares bearing no. 32112 was lodged for transfer by one Mr. Om Prakash Sharma of Jaipur. They further intimated that since the documents were in order and no stop transfer was running at that time they have effected transfer of shares in the normal course."

"2.8 That the LLL finally advised the Insured to obtain necessary prohibitory order from the court to enable them to keep the transfer in abeyance. That since the 100 shares of LLL were transferred in the name of Mr. Sharma, the Petitioner has filed a separate petition in respect of said 100 shares and the present Petition is in respect of 300 shares which are still registered in the name of original transferors."

7.2 Due to the distinction already drawn it is not in dispute that this Petition is to be decided on the basis of the facts of the present case. Present facts are that the Petitioner No.3 had placed corroborative evidence of purchase of shares from K.C. Goenka on 03.08.1996. Further Share Transfer Form witnessed the transaction. Not only this, the Respondent No.1 has also recorded in Register of Members the transfer on 25.09.1996. Through a letter issued by LLL (R1) it was clarified that out of the alleged loss of 400

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shares, original share certificate no.32112 for 100 shares was lodged with them for registration of transfer in favour of the transferee i.e. Mr. Omprakash Sharma.

On the other hand, the claim of the Petitioner is that the right to file this Petition was on account of agreement of subrogation, undisputedly dated 18-10-1997. In the said letter of subrogation, interestingly on internal page-5 at the top name of the registered holder of 100 shares bearing no.32112 was noted as 'Omprakash Sharma'. The date of letter of subrogation is much after the date on which the Respondent No.3 claimed to have purchased the impugned shares. Even it is also interesting to note that a delivery detail statement is placed by the Petitioner according to which pay-out date was 17-07-1996 of share certificate nos.32111 to 32112 i.e. 200 shares of Lupin Lab. As per a settlement delivery slip produced by the Petitioner pay-in date was 15-07-1996 and pay-out dated was 17-07-1996 in respect of delivery of 200 shares in favour of receiving entity i.e. LINN Financial Services, Respondent No.2. After few months vide a letter to M/s. Karvy Consultants dated 22.10.1996 issued by Respondent No.2 it was informed the loss of 200 shares of Lupin Labs stated to be delivered by Kiritkumar C Shah who had in turn purchased from Empire Credit Limited hence made a request to record "Stop Transfer". The delay of few months thus created a doubt about the correctness of the contents of the letter as well as the complaint of loss of shares. Interestingly, according to delivery details statement is in favour of Kiritkumar C Shah mentioned pay-in date as 19-08-1996 and pay-out dated 21.08.1996 of 200 shares of Lupin.

7.3 The dates mentioned on various documentary evidences have been matched and thereafter it emerges that the Respondent No.3 had already purchased those shares on 18-07-1996, however, it is not clear, rather doubtful, that how those very shares were transacted in the month of August, 1996. Even the complaint of loss of share is much later i.e. in the month of October 1996. A serious question is to be raised that why the Oriental Insurance Co. had entered into subrogation arrangement on 18th October, 1997 without verifying the physical existence and the status of the share certificates which were insured. Nowhere on record it is established that before issuing the Insurance Policy all the requisite formalities and verifications have been completed. The Petitioner/Insurance Company has also not placed the Insurance Policy so as to ascertain the terms and conditions under which later on "Agreement of Subrogation" was executed. As noted above the impugned letter of subrogation has duly mentioned the name of the registered holder as 'Omprakash Sharma'. An Insurance Company is expected to undertake thorough due diligence before entering into an agreement of Insurance. In this case ex facie the lack of due diligence is dominant. This is not a case of mala fide purchase by Respondent No.3 of alleged stolen property but in my opinion this is a case where a property (shares) was transacted / insured without ensuring the physical possession of the Insurer / Transferor.

7.4 A list of case laws from both sides have been referred. All these precedents were carefully examined. Nevertheless, this dispute revolves around the dates and the delivery

of shares hence hereinabove decided on the basis of peculiar facts and surrounding circumstances of this case found to be duly corroborated by the documentary evidences by R3.

8. In the result we find no force in this Petition. The Petition is dismissed.

Sd/-

M.K. SHRAWAT
Member (Judicial)

Date : 03.07.2017

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