

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, MUMBAI

CA 102 of 2016

in C.P. 01/59/ NCLT/MB/MAH/2016

AND

CA 103 of 2016

in CP 02/59/NCLT/MB/MAH/2016.

CORAM:

Present:

M.K.SHRAWAT
MEMBER(JUDICIAL)

Between:

1) Mr. Shrikant Mishra

V/s.

M/s. Ryder Shipping Lines Pvt. Ltd.

2) Mr. Sujit Jha

V/s.

M/s. Ryder Shipping Lines Pvt. Ltd.

Present on behalf of the parties:

Advocate Aniket Rausubhe
a/w Mr. Mrugank Shah

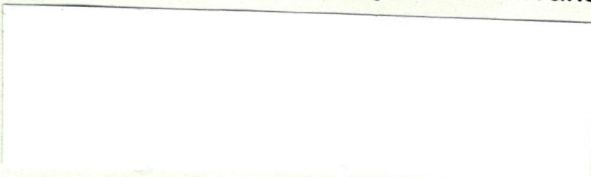
)
) ... Petitioners

Advocate Tejas Luniyo

) ...Respondent

Date of Hearing : 01st March,2017
Order pronounced on : 17th March,2017

- 1) The applications under consideration are (CA 102/2016 and CA 103/2016) filed on 13th October 2016 arising from Company Appeal No. 02/ 59/NCLT/MAH/2016 filed on 9th September, 2016.
- 2) The Applicant is the Respondent of the Main Petition. The reason for filing this preliminary objection is two folds, (i) the NCLT has no jurisdiction to decide the question relating to title of a person in respect of shares holding U/S 58 of the Company's Act, 2013, and (ii) the Petition is belatedly filed hence barred by limitation. (iii) Non-joinder of Transferee of Shares.



- 3) From the side of the Applicant Ld. Representative has pleaded that if compare the language of Section 111 (7) of the Company's Act 1956 with the language of Section 58 of the Act 2013 then it is apparent that in the old provisions it was prescribed that on an Application the Tribunal may decide any question relating to the "Title" of any person. On the other hand U/S 58 no such jurisdiction is enshrined and limited to the jurisdiction as per sub section (5) of the Section. According to which the Tribunal can direct for transfer or transmission and to be registered by the Company or can direct to rectify the Register of Shares. For this legal proposition reliance was placed on the decision of the Hon'ble Karnataka High Court at Bangaluru in the case of Mr. K Ravindra Reddy v/s. Alliance Business School (Company Appeal No.8 of 2016). Order dated 5th August, 2016.
- 3.1) The next objection is that the Petitioner was aware about the transfer of 2500 Equity Shares way back in the year 2011. But after lapse of so many years filed the Petition in the year 2016. As per the general provisions of the Limitation Act at best the Petition should have been filed within 3 years. Because of these reasons, he has pleaded, the Petition deserves to be dismissed at this preliminary stage. Reliance is placed on the order of Hon'ble Supreme Court of Kerala State Electricity Board v/s. TP Kumhaliumma (AIR 1977 SC 282).
- 3.2) The third objection is that in a situation when the Petitioner is seeking declaratory relief against the Transferee then those Transferees should be made a party to the litigation. Because of non-joinder of those parties the Petition is not maintainable.
- 4) From the side of the Respondent of this Application (Petitioner of the Main Petition) Ld. Representative has pleaded that as per the Main Petition the prayer is to hold the transfer of 2500 Equity Shares in the name of one Mr. Rupesh Kumar as null and void. Hence he has pleaded that the question of "Title" is not to be decided but the act of Transfer to be nullified. Further the prayer is that the Register of Members be rectified and the name of the Petitioner be restored in respect of those 2500 Equity Shares.
- 4.1) His next argument is that the Petitioner came to know about the change in the shareholding only in the year 2014 when the Annual Report was submitted and immediately thereafter on 13.8.2016 a police complaint was filed, as well as, a complaint was filed before the Registrar of Companies, Mumbai. The Petition in question has also been filed in the year 2016, i.e. within two years, hence the limitation of three years, if at all, do not apply on this case. Reliance is placed on 'Auduth Modu Timblo V/s. Dilip Modu Timblo and others (2016(1) Mh. L.J), Ramesh B. Desai and Others V/s. Bipin Vadilal Mehta and Others (2006)5 Supreme Court Cases 638) '.

4.2) In respect of the third objection the counter argument is that the shares have not been transferred by the Petitioner hence do not recognise the Transferee. Therefore it was decided not to implead those Transferees. By a wrongful act those Transferees appeared in the Register of Members. However the Petitioner do not know their identity hence legally not required to make them a party.

5) Ld. Representatives of both the sides heard at some length. As far as the question of applicability of the provisions of Section 58 of the Act 2013 is concerned, inter-alia, it is proper to opine at this preliminary stage that the facts of the case do not permit to deal with this issue without examining the evidences. Hence it is not fair to take view that the allegation raised revolve around the issue of "Title" only. The question thus hereby remained open to be decided on the basis of facts of this particular case. In this case the relief sought by the Petitioner is not entirely in connection of the "Title" of the Shares in question. The relief claimed is mainly two fold that the alleged transfer of 2500 Equity Shares be declared as null and void and thereupon the Respondent Company be directed to rectify the Register of Members. As a result the question to be decided is not only pertaining to the claim of "Title" of the Petitioner of the shares. The dispute is that the shares already in the name and in the ownership of the Petitioner have factually been transferred by him in favour of a third party or not? Because of this fine distinction I am of the conscientious view that the legal question raised regarding the interpretation of section 58 (5) of the Act 2013 viz-a-viz the provisions of Section 111(7) of the Act, 1956 is not to be dealt with presently but to be left open for the right occasion. Because of this reason as well the precedence cited is not applicable on the facts of this case.

5.1) The next preliminary objection pertains to the applicability of the Limitation Act on the facts of this case. The annexures/ evidences attached with the Main Petition about the alleged transfer, the date of transfer and the validity of the transfer are yet to be seen and accordingly to be adjudicated upon thereafter. At this preliminary stage it is not justifiable to take decision that the transfer had actually took place way back in the year 2011 as alleged and not in any subsequent year. The actual year of transfer, if any, is a matter of dispute hence not justifiable to dismiss the Petition at the very threshold on this ground. Otherwise also, the Petitioner of the Main Petition is alleging that the so called transfer came to his knowledge in the year 2014 when the Annual Report was submitted by the company with the RoC. I therefore conclude that on this ground as well the Petition should not be held as non-maintainable.

5.2) The next objection is that whether due to non-joinder of Transferee the Petition can be declared as not maintainable? On considering the factual matrix of the case I am of the considered opinion that the Petitioner has prima-facie not recognised those Transferees therefore might have thought it proper not to implead them in this Petition. The vehement objection of the Petitioner is revolving around the alleged transfer hence those related facts are to be examined, therefore, the Petition is required to be decided on it's merits and not to be thrown out of the litigation at the very threshold.

6) In the light of the above discussion and on appreciation of the case laws cited supra, inter-alia, it is hereby concluded that the Petition is maintainable under the provisions of the Act and to be adjudicated on merits. Both the Applications as moved by the Respective Respondents are hereby dismissed. No order as to cost.

17th March,2017.

Sd/-

M.K.SHRAWAT
MEMBER (JUDICIAL)