

In the National Company Law Tribunal,

Kolkata Bench, Kolkata

IA No.13/2017

CP No.173/2015

In the matter of:

The Peerless General Finance and Investment Co. Ltd.

.....Applicant/Respondent

Versus

Narayanan Sisupalan

.....Respondent/Petitioner

Order Delivered on 19th September 2017

Coram:

Vijai Pratap Singh, Member (J)

Jinan K.R., Member (J)

For the Petitioner : 1. Mr. Arik Banerjee, Advocate
2. Mr. Rajib Mullick, Advocate

For the Respondent : 1. Mr. A. Chatterjee, Sr. Advocate
2. Mr. T. Nag Chowdhury, Advocate
3. Mr. A. Basu, Advocate

O R D E R

Jinan K.R., Member (J)

This is an application filed by the Respondent in CP 173 of 2015 for leave to file Supplementary Affidavit with two documents.

2. The brief facts for the consideration of the application are the following: - The CP was filed by the petitioner U/s. 58 and 59 of The Companies Act, 2013 as against the Applicant/Respondent for transfer of 155 equity shares allegedly purchased by

the petitioner in his name. Applicant/Respondent refused transfer assigning no reasons as per its decision dated 29.06.2015. The petitioner challenged the order of refusal by filing the CP before the Company Law Board on 03.09.2015. This CP when taken up for hearing the instant application came up for consideration. The Applicant/ Respondent contends that due to inadvertent mistake date of refusal is written in the affidavit-in-opposition as 20th June 2015 but the correct date of refusal is 29th June 2015 and hence it is to be read as 29th June 2015. The Applicant/Respondent further contends that in Para 10-C of the affidavit -in-opposition it has been stated that Mr. Vinodrai Kanji Bhimani has submitted nomination form on 14th January 2005 in favour of Mrs. Daksha v. Bhimani and Mrs. Tikku N. Bhimani. The fact is that the said request for nomination has in fact filed by Ms. Vanita Vadilal Bhimani who is the recorded holder of the shares in question after death of Vinodrai Kanji Bhimani on 31st October 1991. The said nomination request was filed by Mrs. Vanita Vadilal Bhimani by a letter dated 22nd December 2004 which was received by the applicant company on 4th January 2005. The applicant company duly communicated to Ms. Vanita Vadilal Bhimani that her nomination as requested for has been registered under Sec.109A of the Companies Act, 1956. Based on the above said documents the Applicant/Respondent contends that the document of transfer referred by the petitioner in his petition is a document would not have been signed by Mrs. Vanita Bhimani who exercised her right to nominate two persons in the year 2005. Upon the said contention Applicant/Respondent prays for receipt of the supplementary affidavit.

3. The Respondent / Petitioner in CP (hereafter to be referred as respondent) strongly object the application by filing rejoinder. The respondent contends that Applicant/Respondent filed the application to delay the adjudication in the CP with a further intention to bring new documents at a stage when hearing has already started. By producing new documents Applicant/ Respondent is trying to amend the

pleading in the written objection already filed in this Tribunal. If it is allowed it would amount to allowing the Applicant/Respondent to abuse the process of the Tribunal. The document being in the custody of the Applicant/ Respondent at the time of filing the written objection without valid reasons it could not be received by this Tribunal. The documents referred in the application as Annexure A and B may be created or manufactured by the Applicant/Respondent. The application has been filed with mala fide motive to misled the Tribunal and for improving the contentions already taken by the Applicant/ Respondent in its objection. By filing the application Applicant/Respondent is trying to change the pleading in Para 10 (C) of the objection. The intention of the Applicant/Respondent is to amend the pleading without filing an application for amendment. Various other contentions also taken by the respondents in its rejoinder and that contentions being not relevant for the consideration of the point to be answered in this application not narrated here. Upon the above said contentions respondent prays for dismissal of the application.

4. Heard both sides. Upon perusal of records and considering the arguments the point that arise for determination is that whether this application is to be allowed by receiving the supplementary affidavit with the documents annexed to it.

The Point

5. The respondent in this case allegedly purchased 155 equity shares from three registered holders issued by the Applicant/Respondent Company in favour of 3 different registered holders. He purchased thirty shares from Mrs. Effie Carvalho E Lobo and 125 shares jointly from Mr Vinodrai Kanji Bhimani and Mrs. Bhimani and submitted application for transferring shares from their name to the name of the respondent before the Applicant/Respondent Company. The Applicant/Respondent refused registration of transfer in his name. Hence the respondent filed this petition challenging the refusal order of the Applicant/Respondent.

6. When this CP was taken up for hearing this application filed by the Applicant/Respondent came up for our consideration. According to Ld. Counsel for the Applicant/Respondent receipt of the supplementary affidavit and additional documents no way prejudice to the respondent and that for a fair and just adjudication of the dispute the documents refereed by the Applicant/Respondent is to be received in the Tribunal. According to him filing of the application necessitated because of an inadvertent mistake crept while drafting the pleading and to strengthen the contentions already taken in the affidavit-in – opposition the documents produced along with the supplementary affidavit are essential. ***Billa Jagan Mohan Reddy and another Vs. Billa Sanjeev Reddy and others (1994) 4 SCC 659 and Calcutta Chemical Co. Ltd Vs. Krishna Das Pal and ors. (1985 57 Comp Case 503 Cal, 87)*** are two cases cited by the Ld. Counsel for strengthening his above said argument.

7. Ld. Counsel for the respondent submits that the Applicant/Respondent is trying to delay the proceedings and filed the application with mala fide interest to achieve something indirectly which they could not achieve directly. According to him allowing the application amount to gross abuse of the process of law and process of this Tribunal. He further submits that the documents to be received were in their custody even at the time of filing affidavit in opposition and therefore the delay in filing the same at the juncture of final hearing cannot be condoned. He pressed for dismissal of this application with cost.

8. The respondent main objection that granting leave to file supplementary affidavit amount to adding new plea is found devoid of any merit. Even according to the respondent, the order of refusal was passed by the Applicant/Respondent on 26th June 2015. According to the Applicant/Respondent due to typographical error the date of refusal of registration of the shares in dispute is erroneously mentioned as 20th June 2015 and correct date is 29th June, 2015 and therefore it is to be corrected.

So, the above said correction does not introduce a new plea as alleged. The major correction requested by the Applicant/Respondent is in Para 10 (C) of the affidavit in opposition. It is contended that in the above said Para 10 due to typographical error the name of registered holder of the share who has given nomination is shown as Mr. Vinodrai Kanji Bhimani instead of his wife Mrs. Vanta Vadilal Bhimani. Even in the affidavit in opposition the Applicant/Respondent alleged that the share in dispute was holding by the registered holder and he gave nomination. What is to be corrected is the name of the registered holder and addition of facts connected with nomination. No doubt it is a typographical error. Instead of Mrs Bhimani the name of Mr. Bhimani is written. According to the Applicant/Respondent at the time of issuance of alleged nomination Mr. Bhimani is dead. Upon his death Mrs. Bhimani become exclusive holder of the shares in dispute. Therefore, above said correction does not amount to addition of new pleading.

9. The next contention on the side of the Applicant/Respondent is that a covering letter and the nomination issued by Mrs. Bhimani and copy of reply sent to her by the Applicant/ Respondent is produced along with the affidavit and it is to be marked as Annexure A & B. Admittedly, there is delay in filing the above said documents. Originally this Company Petition No.173/2015 has been filed before the Company Law Board on 3/9/2015. The applicant/respondent filed affidavit in opposition on 13/10/2015. When this Tribunal considered the CP for hearing this application came up for consideration with a prayer to receive the documents which according to the Applicant/Respondent are substantial documents required for a fair and just decision of the case in hand on merit.

10. Reading of the affidavit in opposition it is understood that the Applicant/Respondent raised a pleading to the effect that Mr. Vinodrai Kanji Bhimani has expired on 31/10/1991 and shares are now held by the second holder Mrs. Vanita Vadilal Bhimani and said Mr. Vinodrai Kanji Bhimani has submitted

Nomination Form on 14/1/2015 in favour of Mrs. Daksha Bhimani and Mrs. Tikku Bhimani. However, according to the Applicant/Respondent due to a typographical error name of holder who issued the nomination it is written as Mr. Vinodrai Kanji Bhimani instead of Mrs. Vanita Vadilal Bhimani and to prove that nomination has been submitted by her, produced the same in the Tribunal for strengthening the said contention. The fact that nomination has been issued, there is a pleading to that effect already taken in the objection. Therefore, contention that correction of typographical errors, production of new documents and adding incidental pleading relating to production of new documents amount to adding new plea is also found devoid any merits.

11. However, Ld. Counsel for the Applicant/Respondent unable to convince us that there is no negligence on the side of the Applicant/Respondent in producing documents at a belated stage. Even if there is unexplained delay in filing the supplementary affidavit and the documents, it appears to us that it can be received for just decision of the issues arises for consideration in the instant company petition and for avoiding multiplicity of litigation. Receiving the documents and granting leave to receive supplementary affidavit does not amount to addition of new plea as alleged. So also receiving the same does not amount to admission of the documents in evidence. It can be received only subject to proof on the side of the Applicant/Respondent. The respondent can be given opportunity to file additional rejoinder, if any, to rebut the evidence if any to be received by this Tribunal.

12. The principle laid down in the decisions above referred cited by the Ld. Counsel for the Applicant/Respondent also strengthen the above said view of this Tribunal. However, to compensate the inconvenience, if any, to be caused to the respondent because of receiving supplementary affidavit along with documents can be compensated on payment of adequate cost. Payment of cost Rs...10,000/- to the respondent may be reasonable considering the peculiar nature and

circumstances of this case. If the Applicant/Respondent failed to pay the cost within two weeks of the date of this order, this application stand dismissed.

13. Urgent Photostat certified copies of this Order, if applied for, be supplied to parties upon compliance of all requisite formalities.

List the matter on..... 7/11/17.....

Sd/-
Vijai Pratap Singh,
Member(J)

Sd/-
Jinah'K.R.,
Member (J)

Signed on 19th September 2017