

**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
Allahabad Bench

CP No.17/111 of 2017

CA No...x

IBC No..x

(Under Section 111(2) of the Companies Act, 1956 readwith Section 59  
of the Companies Act)

**In the matter of**

**Mr. Rajesh Kapoor**  
**S/o late Sh. Vishwa Nath Kapoor**  
**R/o 47, Civil Line, Faizabad,**  
**Uttar Pradesh- 224001**

... Petitioner

V/s

**1. M/s Triupati Balaji Hotel Pvt. Ltd.**

**2. Mr. Krishan Kumar Kapoor-**  
**Managing Director.**

**3. Mrs. Madhu Kapoor**  
**Director**

**Both Respondent No. 2 and 3 are**  
**Resident of 2/1/47, Civil Line, Faizabad,**  
**Uttar Pradesh-224001**

**4. Registrar of Companies, New Delhi**  
**4<sup>th</sup> Floor, IFCI Tower, 61, Nehru Place,**  
**New Delhi, 110019**

... Respondents

Judgement/Order delivered on 30.06.2017

Coram:

Hon'ble .....**Shri H.P. Chaturvedi , Member(J)**

**For the petitioner(S).....1. ( Rishi Raj Kapoor),Adv**

**For the Respondent(s)....1.(Ramji Srivastava ), Adv.**

As per .....**Shri H.P. Chaturvedi , Member(Judicial)**

**Order/Judgement**

1. The present petition is filed under Section 111 of the Companies Act, 1956 for seeking transmission of share of the Respondent 1 Company, in the name of the petitioner. The present petitioner Sh. Rajesh Kapoor filed this petition before the Company Law Board, Principal Bench at New Delhi seeking a direction to be issued to the Respondent-Company for transmission its 23,000 shares to his name which were previously held by and in the name of his late father Shri Vishwa Nath Kapoor, as original share holder.
2. The main facts of the case, raising to present petition are stated as under;

Shri Vishwa Nath Kapoor, the father of the present petitioner was one of the shareholder having 2300 shares in the Respondent 1 Company. He passed away on 04/04/2009.
3. It is stated that Shri Kapoor before his demise had executed a Will duly registered on 21.02.2009 in favour of his second son i.e. Shri Rajesh Kapoor, the Petitioner, by declaring him sole legal heir and owner of all his entire movable-immovable properties including, cash, goods, jewellerys, utensils, house, shop and his full shares in the Respondent 1 Company along with money deposited in Banks and post office, house hold goods etc. and also for any other property lying anywhere found to be in his name or possession or shares.
4. It is also contended that his father before his death had handed over to the petitioner all original shares certificates (23,000 shares), those were standing in his name in the records of the Respondent 1 Company. Since the petitioner's father passed away on 04.04.2009. The petitioner

immediately, thereafter having felt apprehension of mis-utilization of funds by the Respondent No. 2 and 3. made an application to the Respondent-Company on 02.06.2009 for seeking transmission of his fathers' shares & other savings in his name.

5. It is also contended that from June 2009 till May 2011, the Petitioner made several representations requesting the Respondent 1 Company to transmit 23,000 shares of his father in his name but no response was received from the Respondent 1 Company or by its present directors nor any kind of action was taken in this respect.
6. The petitioner further alleged that the Respondent no. 2 and 3 have misappropriated and transferred some unsecured loan to the tune of Rs. 5,41,370/- in the name of their daughter by introducing allegedly a fake Will of his late father Sh. Vishwa Nath Kapoor.
7. It is further alleged that the Respondent 1 Company along with Respondent no. 2 and Respondent no.3 are making violation of the provisions of section 111 of the Companies Act, 1956. Such kind of fraudulent activity of Respondent No. 2 & 3 would definitely put the Respondent 1 Company in danger and would be depriving of the legal right and claim of other shareholders including the petitioner in the Respondent 1 Company.
8. Thus, the petitioner has prayed for such reliefs to be granted in terms of the prayer; Clause of the present petition, which are described as below;
  - a. **“Pass an order directing the respondents to transmit entire 23,000 shares of the company in the name of the petitioner, with immediate effect,**
  - b. **Pass any other or further order as this Hon'ble Court may deem fit and proper in the circumstances of the case.”**

9. To claim the above stated reliefs the petitioner made some grounds in the petition contending such below;

- a. The petitioner, being a legal heir of Shri Vishwa Nath Kapoor, was entitled to and had right of transmission of the shares belonging to his father in accordance with the provision of section 111 of the Companies Act, 1956 and non-transmission of such shares is against the laws and especially the Company Law.
- b. As the respondents have failed to transmit these shares and there is no lawful reason or ground for not transmitting the same. Therefore, the petitioner has right to get 23,000 shares (of his late father) transferred in his favour.
- c. As the Respondents has been resorting all means of fraudulent act, fabricated and concocted stories, wrong representation to make misappropriation, mismanagement, misfeasance etc. prejudicial to the interest of shareholders, company and other stakeholders.
- d. As the Respondent No.1, Respondent No.2 and Respondent No.3 are clearly violating the provisions of section 111 read with other provision of the Companies Act.

In addition to the above, the petitioner also sought for interim relief during pendency of the present petition, which are mention as below;

- a. **Pass an ex-parte stay order in favour of the petitioner;**
- b. **Pass an order directing the respondents to restrain from changing the pattern of shareholders/ and/ or refrain from transfer of exiting shares to any third party and/or;**
- c. **Pass an order directing the Respondent No.1 Company to maintain status quo regarding the shares of existing shareholders.**

**10.** In opposition of the above petition, the Respondent-Company along with other Respondents have filed their Reply. It is contended by them that the petitioner has concealed the material fact with Respondent 1 Company and as well with this court that the deceased Late Sh. Vishwa Nath Kapoor had subsequently executed another Will on 13.03.2009, in presence of two witnesses revoking the earlier one. The subsequent Will was last and final wish and Will of the deceased Shri Vishwa Nath Kapoor. It is further informed that Shri Krishna Kapoor (Respondent No.2) along with his another brother Shri Kaushal Kapoor have jointly filed a civil suit before a Civil Court for cancellation of the disputed Will dated 21.02.2009 and this matter is now sub-judice before it.

**11.** It is also contended by the Respondents that the petitioner although approached the office of Respondent 1 Company seeking transmission of shares standing in the name of his father on the basis of such registered Will purported to be executed in his name, yet (his) such request was not accompanied with the shares certificates and probate of the Will. Hence, it was not accepted and acknowledged by the Respondent-Company and other Respondents. The petitioner was advised to approach/ make contact with the Secretarial Department of the Company to complete the requisite formalities and submit its request to the office of the Company. Therefore, the petitioner is required to prove such facts that his application dated 02.06.2009 was actually received by the company as 'dasti' and whether it was accompanied with the shares certificates and probate of Will or it filed later on at any time in the office of the Respondent Company.

**12.** It is also alleged that the petitioner has been sent to judicial custody upon his surrender in the criminal (complaint no. 452012011 u/ss. 419/ 420/ 467/ 468/471

lodged with City Police Station, Faizabad on 17.02.2011) later on he was released from the judicial custody on 21.06.2011. Therefore, as per Respondents, the petitioner could not have sent such letter(s) dated 10.04.2011, dated 14.05.2011 to the Company, while he himself was in the custody. Because a person in custody is expected to send his mail, letters only through Jail Superintendent. Hence, on account of this also Respondents prayed for rejection of the present petitioner/ application.

**13.** By considering the above stated facts and circumstances of the present case the dispute involved therein, the main issue arises to be considered by this Tribunal within ambit and scope of the Section 111 of Act 1956 Act readwith sections 58 of the Act, 2013 can be categorised as under;

- i. As to whether this Tribunal can adjudicate a dispute relating to title of shares and examined the validity and authenticity of a disputed document i.e. Will in question.**
- ii. Whether the jurisdiction of the Company Law Board as well as of this Tribunal under section 111 of 1956 Act readwith 58 of 2013 is of summary in nature or otherwise. Further the question of disputed facts can be determined and decided?**


**14.** As the above stated point of issues arises in the present petition are based on common facts of disputed Will(s) and documents available on record hence are being discussed jointly and decide commonly in succeeding paragraphs.

**15.** We have considered the above stated rival submissions made by the both parties and perused the contents of the main petition, counter affidavit/reply to the main petition filed on behalf the Respondent-Company alongwith documents annexed therewith and further rejoinder to the


reply filed by the petitioner. That apart we have heard the arguments of the learned counsel for both the parties and perused written argument filed by the Respondent No.2.

**16.** Having considered the rival submissions made before us by the counsel for both the parties and having gone through the record of the case made available to us. We find that there is some admitted position in the present case that the petitioner and Respondent No.2 are real brothers alongwith his another brother Shri Kaushal Kapoor and they are having sisters also as being daughter of late Shri Vishwa Nath Kapoor. It is also a matter of record, that the Will in question, which is now subject matter of the present petition has not yet been probated by a Competent Civil Court nor any Succession Certificate on the strength of such Will has been issued or produced by the petitioner in the office of Respondent-Company nor before this Forum.

**17.** It is also a matter of record that the Respondent No.2 already filed a civil suit before the competent Civil Court i.e. Court of Civil Judge C.D., Faizabad making such prayer for declaration to this effect that the disputed Will dated 08.12.2008 registered in favour of the defendant (herein petitioner) on 21.2.2009 be declared as null and void and other consequential reliefs as prayed for also to be granted. It is also a matter of record that in this suit the Respondent No.2 along with co-plaintiff Sh. Kaushal Kapoor have pleaded (interalia) that their father Vishwa Nath Kapoor was survived by his three sons and three daughters including the petitioner one. His father Vishwa Nath Kapoor was a practising advocate his family was a Hindu undivided family he was karta Khandan of his family. He suffered with an attack of paralysis six months before his demise. Therefore, he was unable to move and was bed ridden. Hence, he was being look after by the plaintiff in the suit (herein Respondent No.2 in the present petition) and by his another brother. It is further pleaded in the said civil suit that his father before his



sudden demise had executed a power of attorney in favour of the plaintiffs (Respondent No.2 in the present petition) granting him right to advocacy of cases and sale of his property. It is also pleaded in the above said suit that their father late Sh. Vishwa Nath Kapoor had further executed another Will on 13.03.2009 cancelling the previous one eg. Will dated 21.02.2009. The subsequent Will was got notarised and duly registered with the office of the Registrar. Thereafter, the plaintiff filed a suit no. 02/2009 before the Court of Civil Judge, Faizabad praying for declaration of their being owner of the property of the late Vishwa Nath Kapoor on the strength of such subsequent Will dated 13.03.2009. Thus, these Suit are stated to be pending and subjudice before the Civil Court and the authenticity and validity of the Will in question as relied upon by petitioner, equally, the subsequent Will dated 13.03.2009 as relied upon by the Respondent No. 2 is under scrutiny and being examined by a competent Court of law. Thus, the issues involved therein are still subjudice before it. Therefore, we feel that on strength of such disputed documents/ Will neither it would be proper for nor safe to the Respondent- Company to act upon for transmission of share nor this Forum can be expected to issue such direction to the Respondent-Company as prayed for until a competent court of law gives its conclusive findings on the authenticity and validity of the Will in question and which are subject matter of the present petition.

- 18.** Moreover, the Respondent-Company has seriously disputed the receipt of a formal and proper request from the petitioner for seeking transmission of shares along with shares certificates and duly probated Will or supported by a Succession Certificate. It seems to be undisputed position in the matter that the petitioner has not so far produced before this Court any Succession Certificate obtained from a Competent Court of law or a decree from the Competent Civil
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Court probating such Will. Therefore, in our view, the First Respondent -Company cannot be found fault with for not transmitting such shares of late Sh. Vishwa Nath Kapoor in favour of present petitioner. As we have already observed that it would not be safe nor proper for it to act upon mere a Will which is being seriously disputed. Hence, petitioner's request for transmission of shares cannot be accepted till the petitioner produces an order in his favour from the competent Civil Court in this respect.

19. To arrive to the above stated conclusion, we carefully studied the relevant provision of section 58 of the Companies Act, 2013 readwith erstwhile provision of section 111 of 1956. The above provisions, speaks as under;

**Provisions of Companies Act, 2013**

*“Section 58 - (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 transfer 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 extend to five lakh rupees.

**The corresponding section of Companies Act, 1956**

**“ Section-111- Power to refuse registration and appeal against refusal-**(1) If a company 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 shares or interest of a member in, or debentures of, the company, it shall, within two months 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 transferee and the transferor or to the person giving intimation of such transmission, as the case may be, giving reasons for such refusal.

(2) The transferor or transferee, or the person who gave intimation of the transmission by operation of law, as the case may be, may appeal to the [ Tribunal against any refusal of the company to register the transfer or transmission, or against any failure on its part within the period referred to in sub-section (1), either to register the transfer or transmission or to send notice of its refusal to register the same.

(3) An appeal under sub-section (2) shall be made within two months of the receipt of the notice of such refusal or, where no notice has been sent by the company, within four months from the date on which the instrument of transfer, or the intimation, as the case may be, was delivered to the company.

(4) if-

(a) the name of any person-

(i) is, without sufficient cause, entered in the register of members of a company, or

(ii) after having been entered in the register, is, without sufficient cause, omitted therefrom; or

(b) default is made, or unnecessary delay takes place, in entering in the register the fact of any person having become, or ceased to be, a member including a refusal under sub-section (1),

The person aggrieved, or any member of the company, or the company, may apply to the (Tribunal) for rectification of the register.

(5) The (Tribunal), while dealing with an appeal preferred under sub-section (2) or an application made under sub-section (4) may, after hearing the parties, either dismiss the appeal or reject the application, 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 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) The [Tribunal], while acting under sub-section (5), may, at its discretion, make-

(a) such interim orders, including any orders as to injunction or stay, as it may deem fit and just;

(b) such orders as to costs as it thinks fit, and

(c) incidental or consequential orders regarding payment of divided or the allotment of bonus or rights shares.

(7) On any application under this section, the [Tribunal] -

(a) may decide any question relating to the title of any person who is a party to the application to have his name entered in, or omitted from, the register;

(b) generally, may decide any question which it is necessary or expedient to decide in connection with the application for rectification.

(8) The provisions of sub-sections (4) to (7) shall apply in relation to the rectification of the register of debenture-holders as they apply in relation to the rectification of the register of members.

(9) If default is made in giving effect to the orders of the (Tribunal) under this section, the company and every officer of the company who is in default shall be punishable with fine which may extend to [ten thousand rupees], and with a further fine which may extend to [One thousand rupees] for every day after the first day after which the default continues.

(10) Every appeal or application to the [Tribunal] under sub-section (2) or sub section (4) shall be made by a petition in writing and shall be accompanied by such fee as may be prescribed.

(11) In the case of a private company which is not a subsidiary of a public company, where the right to any shares or interest of a member in, or debentures of, the company is transmitted by a sale thereof held by a Court or other public authority, the provisions of sub-sections (4) to (7) shall apply as if the company were a public company.

Provided that the [Tribunal] may, in lieu of an order sub-section (5), pass an order directing the company to register the transmission of the right unless any member or members of the company specified in the order acquire the right aforesaid within such time as may be allowed for the purpose by the order, on payment to the purchaser of the price paid by him therefor or such other sum as the [Tribunal] may determine to be

*a reasonable compensation for the right in all the circumstances of the case.*

*(12) If default is made in complying with any of the provisions of this section, the company and every officer of the company who is in default, shall be punishable with fine which may extend to [five hundred rupees] for every day during which the default continues.*

*(13) Nothing in this section and section 108,109 or 110 shall prejudice any power of a private company under its articles to enforce the restrictions contained therein against the right to transfer the shares of such company.*

*[(14) In this section 'company' means a private company and includes a private company which had become a public company by virtue of section 43A of this Act.]*

20. Thus, in view of the above stated statutory provision, it may be seen that the power of Tribunal under section 111(7) of the Act, 1956 now stand amended by virtue of section 58(5) of the Act,2013. Which has narrowed the scope of the section and jurisdiction of this Tribunal to the extent of giving hearing on such application and, the power of Tribunal to decide question of the title appears to be withdrawn by the subsequent statute.

21. Further the legal position in this respect has been settled in the light of the Rulings the Hon'ble Supreme Court, High Court of Bombay and Hon'ble Company Law Board in the matter of **(1) Jai Mahal Hotels Pvt. Ltd. Vs Rajkumar Devraj and others, (2) Prabodh Jamnadas Kothari Vs Vikram Jamnadas Kothari & ors , (3) Sh. Dhirubhai Alias Dhirajlal H.Desai Vs. Saurabh Desai Exports Pvt. Ltd. & ors.**

22. The Hon'ble Supreme Court in the case of *Jai Mahal Hotels Pvt. Ltd. Vs Rajkumar Devraj and others* has pleased to observe as follows;

*16 In Ammonia (Supra), the scope of jurisdiction of the Company Court to deal with an issue of rectification in the Registrar of Members maintained by the Company was considered. Following Public Passenger Service Ltd. Vs. M.A. Khadar[10], it was held that jurisdiction under section 155 was summary in nature. If for reasons of complexity or otherwise, the matter could be more conveniently decided in a suit, the court may relegate the parties to such remedy. Subject to the said limitation, jurisdiction to deal with such matter is exclusively with the Company Court. It was observed;*

*(31) ...It cannot be doubted that in spite of exclusiveness to decide all matters pertaining to the rectification it has to act within the said four*

corners and adjudication of such matters cannot be doubted to be summary in nature. So, whenever a question is raised the court has to adjudicate on the facts and circumstances of each case. If it truly is rectification, all matters 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 a civil court. Unless jurisdiction is expressly or implicitly barred under a statute, for violation or redress of any such right the civil court would have jurisdiction.....

17. Thus, there is a thin line in appreciating the scope of jurisdiction of the Company Court/ Company Law Board. The Jurisdiction is exclusive if the matter truly related to rectification but if the issue is alien to rectification, such matter may not be within the exclusive jurisdiction of the Company Court/ Company Law Board.

18. In standard Chartered Bank(Supra), scope of Section 111(7) was considered. It was observed that jurisdiction being summary in nature, a seriously disputed question of title could be left to be decided by the Civil Court. It was observed:

(29) The nature of proceedings under section 111 are slightly different from a title suit, although, sub-section (7) of Section 111 gives to the Tribunal the jurisdiction to decide any question relating to the title of any persons who is a party to the application, to have his name entered in or omitted from the register and also the general jurisdiction to decide any question which it is necessary or expedient to decide in connection with such an application. It has been held in Ammonia Supplies Corpn.(P) Ltd. v. Modern Plastic Containers (P) Ltd. that the jurisdiction exercised by the Company Court under section 155 of the Companies Act, 1956 ( corresponding to section 111 of the present Act, before its amendment by Act 31 of 1988) was somewhat summary in nature and that if a serious disputed question of title arose, the Company court should relegate the parties to a suit, which was the more appropriate remedy for investigation and adjudication of such seriously disputed question of title.

19. In Luxmi Tea Company Limited and Bajaj Auto Ltd. (supra), it was observed that a company did not have any discretion in rectifying its register except to require the procedure being follows.

**23.** Thus, it has been held that the jurisdiction exercised by the Company Law Board under previous section 155 (now repealed provisions of previous Companies Act) is of summary in nature.

**24.** Further, the Hon'ble Bombay High Court in the matter of **Prabodh Jamnadas Kothari Vs Vikram Jamnadas Kothari & ors.** also took a similar view by observing as;

" 26. The plaintiff has never been a member of the Company. His shares have not been transferred. The plaintiff has not sought to purchase the shares either. He has sought transmission of 50% of the shares held his father. The plaintiff only claims 50% of the shares held by deceased father and bequeathed to the plaintiff. If the plaintiff applied before the CLB, he would be called upon to obtain a

declaration of the Civil Court that he is entitled to 50% shares which actually stood in the name of the father of the plaintiff. The Civil Court would have to determine the title of the deceased father and thus later in the estate left by the father. This the CLB cannot determine. Only the Civil Court would determine title to an estate of a deceased. Further, for such determination, the plaintiff would have to obtain probate of the Will of his deceased father. Without such probate the plaintiff will have no cause to apply before the CLB. Of course, the plaintiff shall have to apply before the CLB, but not before obtaining this Court's declaration and/or the probate.

27. In this suit there are complicated questions of fact relating to whether or not fraud has been played upon the Plaintiff before the shares of the deceased father of the plaintiff came to be transferred in the name of the defendant no.2, his daughter-in-law. If the plaintiff would apply to the CLB for addition of his name in the register of members in respect of 50% of those shares as a person having title to that extent and claiming such title, the Plaintiff would have to lead evidence of the fraud before the question of title is decided as also the question in connection with the fraud which would be the evidence relating to negotiations by the correspondence by the aforesaid E-mails or otherwise between the brothers. The defendants have sold the shares which was the property of defendant no.5 Company in which the deceased held those shares.

28. Of course, under Sec. 10(E) (4C) and Sec. 111(4) and (7) the tribunal would have otherwise had jurisdiction to add the plaintiff's name. However, in view of the aforesaid facts and tribunal would have to determine whether the shares were transferred to exclude the plaintiff or even his father.

29. Whether or not the tribunal could go to such extent in such determination was held affirmatively in the case of *Public Passenger Service Ltd. V.M.A. Khadar* (1966)36 Comp. Case 1: (MANU/SC/0045/1965: AIR 1966 SC 489, Full Bench). However, it held that jurisdiction which was then with the company court u/s 155 of the Companies Act, 1956 prior to the aforesaid amendment was discretionary and summary in nature and that the court could decline to entertain the petitions if they raised dispute and complicated questions requiring evidence.

30. In the case of *Standard Chartered Bank V/s Andhra Bank Financial Services Ltd.*, MANU/SC/2534/2006(6) SCC 94 also it has been held that if several disputed questions of fact arose, the Company Court (now CLB) should relegate the parties to a suit which is a more appropriate remedy for investigation and adjudication of such claims.

31. In the case of *Ammonia Supplies Corpn. Pvt. Ltd. V. Modern Plastic Containers Pvt. Ltd.*, MANU/SC 0585/1998: AIR 1998 SC 3153, which was after the amendment of 1988 SC 3153, which was after the amendment of 1988 came into force, the dictionary meaning of the expression "rectify" came to be seen. It was shown to be "alter" and hence it was held to imply the correctness of an error, mistake or defect and removal of defect or imperfections. It was held that though in matters falling within the peripheral field of rectification the Company Court (and now the CLB) would alone have jurisdiction, if

*the issues were not peripheral to rectification but were the issues regarding disputed civil rights, title or denial of any transaction they would have to be decided by the Civil Court. The very style of the judgement in para 26 makes this position clear:*

*Otherwise under the garb of rectification one may lay claim to many such contentious issues for adjudication not falling under it" (Sec. 155) and in para 27*

*The Court has to examine on the facts of each case whether an application is for rectification or something else.*


*.... What comes under rectification, not projected claims under the garb of rectification."*

*32. Hence though recognizing that the Company Court (now CLB) would be the Court of exclusive jurisdiction for applications for rectification of register of members, it is held that if the issues arose whether the plaintiff was the owner of the shares, whether there was fraud or forgery or there was dispute on the very title of the shares, those issues would be beyond the jurisdiction of the companies Court and would have to be decided by the Civil Court. This would be upon the issues that arises in an application. It may be mentioned that an issue arises when a material fact is alleged and disputed. Hence, mere mention of fraud may not take the matter out of the exclusive jurisdiction granted by the statute to the CLB, but when the "very title to the shares" is challenged and the Court sees that is at least prima facie shown, the Civil Court's jurisdiction would not stand barred.*

*33. A further reading of para 26 indicates that in cases such as this the right of the applicant who claims that his name be entered in Register of members of a Company would have to be decided first before such an application is made:*

*In other words, the Court (Company Court/CLB) has discretion to find whether the dispute raised is really for rectification or is of such nature that unless decided first would not come within the preview of rectification."*

**25.** In addition to the above, the Hon'ble Company Law Board, Principal Bench in the matter of **Dhirubhai Alias Dhirajlal H.Deasi Vs Saurabh Desai Exports Pvt. Ltd. & Ors** , CP No. 43(MB)/2015 has also held such if a probate proceedings are pending before a Civil Court, then the petition under the Companies Act for rectification of Register would not be maintainable as the jurisdiction of the Company Law Board in such matter is of summary nature and disputed question of facts cannot be determined and adjudicated.

 The relevant extract of the judgement of Hon'ble Company Law Board may be reproduced hereinbelow;

" Having heard the learned counsel for the parties and perusing the various judgements cited at the Bar I am of the considered view that application for withdrawal of the C.P. No. 43 of 2015 merits acceptance. The primary relief claimed in the Company petition is for rectification of members' register which is based on a disputed title sought to be derived from a Will propounded by one Mr. Rajiv Desai. The matter is pending before the Probate court at Navsari Court at Gujrat. It is well settled that all cases involving the disputes shall be decided firstly by the Civil Court where evidence in detail could be adduced and comprehensive procedure laid down in CPC/ Evidence Act and said statute of civil law could be followed. It is conceded as a principle of law that Tribunal/ Company Law Board is a creature of statute and the jurisdiction conferred on it are not exclusive in such like facts and circumstances where title dispute is raised. In that regard reliance may be placed on the observations made by Hon'ble Supreme Court in Ammonia Supplies Corporation case. It would be profitable to red following observations of the Hon'ble Supreme Court in Ammonia Supplies Corporation (P) Ltd. Case at PP 328 of the report which are as under:-

" Sub-section (1)(a) of section 155 refers to a case where the name of any person without sufficient cause entered or omitted from the register of members of a company. The words "sufficient cause" are to be tested in relation to the Act and the Rules. Without sufficient cause entered or omitted to be entered means done or omitted to do in contravention of the Act and the Rules or what ought to have been done under the Act and the Rules but is not done. A reading of this sub-clause spells out the limitation under which the court has to exercise its jurisdiction. In spite of its exclusive jurisdiction to decide all matters pertaining to rectification, it has to act within the said four corners and jurisdiction of such matters cannot be doubted to be summary in nature. So, whenever a question is raised court has to adjudicate on the facts and circumstances of each case. If it truly is rectification, all matters 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 the Civil Court. Unless jurisdiction is expressly or implicitly barred under a statute, for violation or redress of any such right civil court would have jurisdiction"

It is thus true that the jurisdiction of the company court is exclusive but it is not a rule of universal application. In appropriate cases there may be need to extract facts by adducting evidence. However, within the competence this court can try to adjudicate with permissible limits. The aforesaid view has been followed and applied by a Division Bench of Bombay High Court in paras 17,18,19 in the case of CDS Financial Service (supra) has taken the following views:-

From the above two decision of the Supreme Court, it is clear that when there is no express provision excluding jurisdiction of the civil courts, such exclusion can be implied only in cases where a right itself is created and the machinery for enforcement of such right is also provided by the statute. If the right is traceable to general law of contract or it is a common law right, it can be enforced through civil court, even though the forum under the statute also will have



*jurisdiction to enforce that right. There is a plethora of decisions of various High Courts including the decisions of the High Courts of Kerala, Andhra Pradesh, Madras, Punjab and Haryana and Calcutta in favour of the view that their sections 397 and 408 do not confer exclusive jurisdiction on the Company court to grant relief against oppression and mismanagement. The scope of these sections is to provide a convenient remedy for minority shareholders under certain conditions and the provisions therein are not intended to exclude all other remedies. The suits by minority shareholders against oppression and mismanagement, have been time honoured exception to the rule in Foss vs Harbottle (1843) 2 Hare, 461 and in the absence of word expressly or impliedly barring them it cannot be said that sections 397,398 and 408 of the Companies Act exclude jurisdiction of the ordinary courts."*

**26.** In view of the above stated decision of the Hon'ble Supreme Court, Hon'ble Bombay High Court and the Hon'ble Company Law Board, we find that relief sought for in the present petition is not tenable being premature and the parties are expected to get adjudicate their dispute in respect of disputed Will from a Competent Court of Law. Hence petition is liable to be rejected and our conclusions are summarised as under;

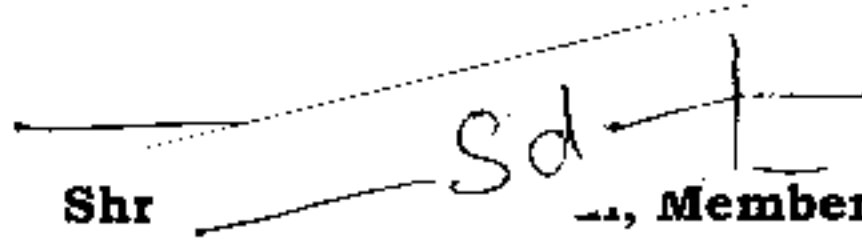
“ The petition is partly allowed with following direction to the Respondent Company to maintain status quo in Company's record in respect of proposed transmission 23,000 of share as previously held by Late Shri Vishwa Nath Kapoor which is subject to outcome of a civil dispute pending between the parties before the Civil Court of Faizabad, U.P. wherein in the authenticity and validity of will dated 13.03.2009, and another will dated 21.02.2009 as stated to be executed by Late Vishwa Nath Kapoor(HUF) is under examination before (in OS No. 359/2011 titled as Krishna Kumar vs Rajesh Kumar and others).

It is further held that the relief sought for by petitioner in the present application in form of a direction sought to be issued to the Respondent Company for transmission (such) of such shares (23,000 shares) in the name of Present Petitioner is not tenable being premature.

Because the wills in question, subject matter of present petition have not so far been probated by a competent Civil Court nor any succession certificate in respect of above stated shares is produced. That apart the authenticity and validity of said will is being seriously disputed by the Respondents and a Civil Suit for cancelation of such said will is pending before a Civil Court thus the matter is sub-judice.

Therefore, in the light of the decision of the Hon'ble Supreme Court in the matter of *Jai Mahal Hotels Pvt. Ltd. Vs Rajkumar Devraj & Ors*<sup>1</sup>, Hon'ble High Court in the matter of *Prabodh Jamnadas Kothari vs Vikram Jamnadas Kothari & Ors*<sup>2</sup> Company Law Board in matter of *Sh. Dhirubhai Alias Dhirajlal H. Desai vs Saurabh Desai Exports Pvt. Ltd. & Ors*<sup>3</sup> the Petitioner as well as Respondent are advised to get adjudicate the legality and validity of the wills which are subject matter of the present petition. Thereafter further necessary action can be taken by the Respondent Company or to be considered by this Tribunal in accordance with law.”

Thus the present petition stands partly allowed and stands finally disposed of. No order as to cost.

Shr  Member (J)

<sup>1</sup> Civil Appeal No.7914 of 2015

<sup>2</sup> MANU/MH/1845/2012

<sup>3</sup> CP No. 43(MB)/2015