

**NATIONAL COMPANY LAW TRIBUNAL  
AHMEDABAD BENCH  
AHMEDABAD**

C.P. No. 16/241-242/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 14.11.2017**

Name of the Company: Sangeeta Maheshwari  
V/s.  
Premsagar Agricultural Pvt. Ltd. & Ors.

Section of the Companies Act: Sections 241-242 of the Companies Act, 2013

S.NO.	NAME (CAPITAL LETTERS)	DESIGNATION	REPRESENTATION	SIGNATURE
1.	Pranjal Buch	Advocate	Respondents	
2.	for Singli & Co.			

**ORDER**

None present for Petitioner. Learned Advocate Mr. Pranjal Buch present for Respondents No.1 to 6.

Order pronounced in open court. Vide separate Sheets.

  
**BIKKI RAVEENDRA BABU  
MEMBER JUDICIAL**

Dated this the 14th day of November, 2017.

**NATIONAL COMPANY LAW TRIBUNAL  
AMEDABAD BENCH  
AHMEDABAD**

**CP No. 16/241 & 242/NCLT/AHM/2016**

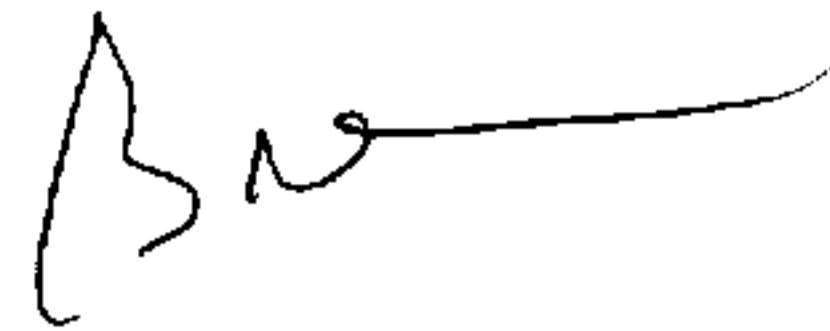
**In the matter of:**

Sangeeta Maheshwari  
residing at Sri Vishnu,  
Plot No. 47/1, HUDA Heights,  
Road No. 12, Banjara Hills  
Hyderabad 500 034

**Petitioner**

**VERSUS**

1. M/s. Premsagar Agricultural Pvt. Ltd.  
Sridhar, 10-A, B.J. Bihar Colony  
Chitavad Nemavar Road  
INDORE 452 001
2. Shri Kamal Agal  
80, Janki Nagar  
INDORE (M.P.)
3. Mrs. Premlata Agal  
80, Janki Nagar  
INDORE (M.P.)
4. Mr. Pankaj Agal  
80, Janki Nagar  
INDORE (M.P.)



5. Mrs. Pooja Agal  
80, Janki Nagar  
INDORE (M.P.)
6. Mr. Pavitra Agal  
S/o. Mr. Pankaj Agal  
Sridhar, 10-A, B.J. Bihar Colony  
Chitavad Nemavar Road  
INDORE 452 001

**Respondents**

**Order delivered on 14<sup>th</sup> November, 2017**

**CORAM: Hon'ble Mr. Bikki Raveendra Babu, Member Judicial**

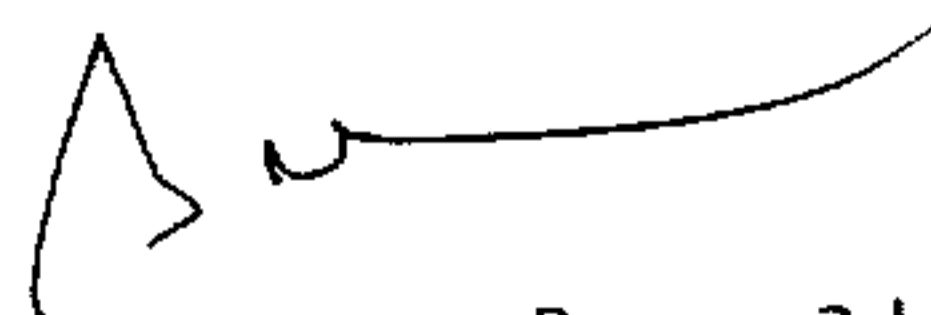
**Appearance:**

For the petitioners: Learned FCA Mr. Kamal Agrawal

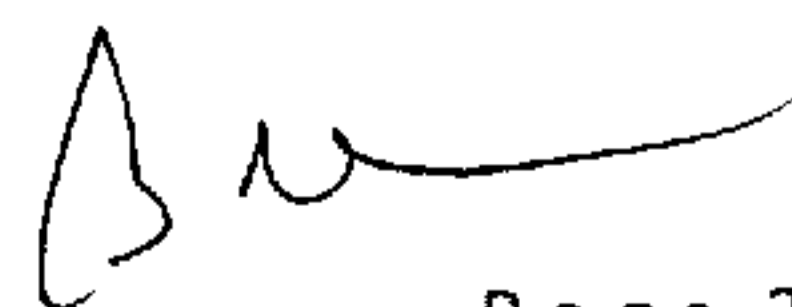
For the respondents: Learned advocate Mr. Sandeep Singhi  
with learned advocate Mr. Pranjal Buch

**ORDER**

01. This is a composite petition filed by divorced wife of 2<sup>nd</sup> respondent under Section 58 and 59 and Section 241 and 242 of the Companies Act, 2013 challenging the transfer of 200 shares held by her in the first respondent company to the 3<sup>rd</sup> respondent on 15.03.2013; challenging the increase in authorised share capital of the first respondent company from Rs. 1.00 lac to Rs. 10.00 lacs on 27.08.2015; allotment of 9000 shares of the first respondent company to respondent No. 6 on 29.01.2016; challenging siphoning of funds of the first respondent company and attempts to sell and transfer of assets of the first respondent company.

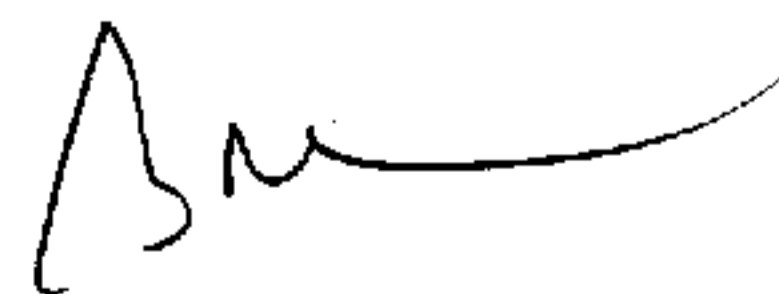


02. The facts in brief that are necessary for adjudication of the issues involved in this petition are as follows: -
03. Agal family, during 1987, promoted the first respondent company. Petitioner is husband of 2<sup>nd</sup> respondent till their marriage was dissolved by decree of divorce on 12.01.2001. Agal family consist of five major members including the petitioner till she was divorced. The first respondent company is a family company. There is no dispute about the fact that originally petitioner and respondents No. 2 to 5 were holding 200 shares each in the first respondent company. Authorised capital of the company was Rs. 1.00 lac divided into 1000 shares of Rs. 100/- each till it was increased to Rs. 10.00 lacs on 27.08.2015.
04. According to the petitioner, she acquired 200 shares in the first respondent company from her own personal savings and, therefore, even after dissolution of marriage on 12.01.2001 shares of the petitioner continued to be registered in the name of the petitioner in the records of the first respondent company. But, on 15.03.2013 the first respondent company illegally and fraudulently transferred 200 shares of the petitioner in the name of respondent No. 3 and, thereafter, removed name of the petitioner from the register of the first respondent company. Although petitioner was shareholder of the first respondent company till 15.03.2013, no notice of AGM or EOGM was ever sent to her. The first respondent company did not even



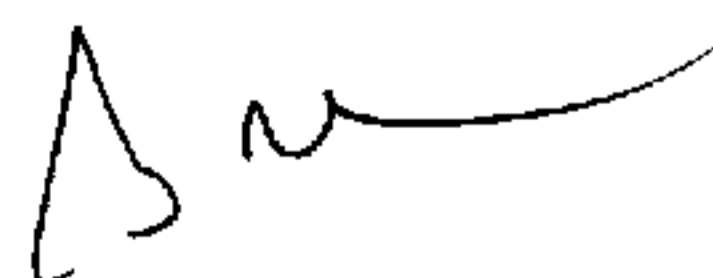
handover share certificates to the petitioner. It is alleged by the petitioner that respondents dishonestly and on the basis of fraudulent documents deleted her name from the records of the Registrar of Companies. On 24.08.2015, petitioner requested the first respondent company for issuing share certificate in respect of her 200 shares but there was no response from the first respondent company. Petitioner filed application dated 12.01.2016 with the Registrar of Companies, Madhya Pradesh complaining about non-receipt of her share certificates. The Registrar of Companies, MP by letter dated 04.02.2016 advised the first respondent company to redress the grievance of the petitioner.

05. Petitioner with the assistance of her authorised representative Mr. Kamal Agarwal downloaded annual return of the first respondent company for the year ended 31.03.2013 and found that her 200 shares were transferred in the name of respondent No. 3. Immediately thereafter petitioner gave an application to the Registrar of Companies, MP on 19.07.2016 and requested for correction in the register of members in respect of her 200 shares in the first respondent company. First respondent company wrote a letter dated 10.02.2016 to the Registrar of Companies, MP alleging that the claim of the petitioner is false and stating that in the family settlement dated 29.06.2000 after receiving valuable consideration from respondent No. 2, petitioner transferred all her claims including her shares in the first respondent company and handed over share certificates to



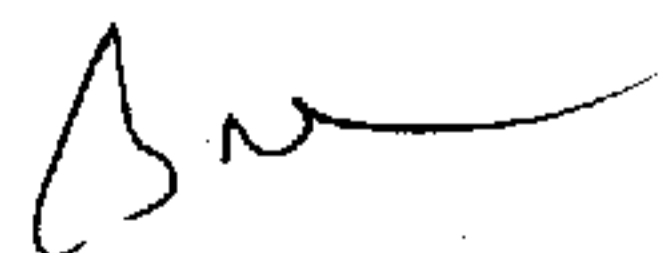
respondent No. 2. The Registrar of Companies, MP forwarded the said letter to the petitioner by his letter dated 10.08.2016.

06. It is stated by the petitioner that she never sold 200 shares of the first respondent company to Respondent No. 3 or to any other person. Petitioner further pleaded that she did not execute any transfer deed in favour of any person including respondent No. 3 in respect of 200 shares of the first respondent company. Petitioner also pleaded that she did not receive any payment towards consideration for the transfer of her 200 shares. Petitioner alleges collusion amongst the respondents and effected transfer of her shares in the name of respondent No. 3.
07. Petitioner with the assistance of authorised representative downloaded various forms filed by the first respondent company with the Registrar of Companies, MP from 2011 to 2016. Form No. 32 filed by the respondents with the Registrar of Companies MP on 27.01.2011 shows that respondent No. 2 had resigned from the Board of the first respondent company and respondent No. 3 and 6 were appointed as Directors of the first respondent company. Form No. 18 filed by the first respondent company disclose registered office of the first respondent company was shifted to the present address. Form No. 20B filed by the first respondent company with the MCA for the year ended 31.03.2013 for AGM dated 30.09.2013 disclose that 200 shares of the petitioner were transferred on 15.03.2013 in the name of



respondent No. 3. Form No. SH-7 filed by the first respondent company with the Registrar of Companies, MP disclose that an alleged EOGM was held on 27.08.2015 wherein authorised share capital of the first respondent company was increased from Rs. 1.00 lac to Rs. 10.00 lacs.

08. First respondent company allotted 9000 shares to respondent No. 6 without offering the shares to other shareholders only with an intention to reduce the shareholding of the petitioner. Petitioner alleged that financial statements filed by the first respondent company in respect of AGM dated 30.09.2015 disclose that the revenue of the first respondent company was shown far below than the previous years and the expenditure was shown increased disproportionately. According to the petitioner increase in the authorised capital, allotment of shares to respondent No. 6, increase in expenditure items and showing the reduced revenue were all acts of oppression and mismanagement that were carried out by the respondents in a systematic manner only after the petitioner requested for the share certificate of her 200 shares. Petitioner also alleged that allotment of 9000 shares to respondent No. 6 at a premium of Rs. 105/- per share is far below the fair value of the share. According to petitioner, fair value per share would be Rs. 1,20,000/- taking into account the value of the land of the first respondent company. Petitioner also alleged that she reliably learnt that major part of the land owned by the first respondent



company were transferred to third party to defeat the claim of the petitioner.

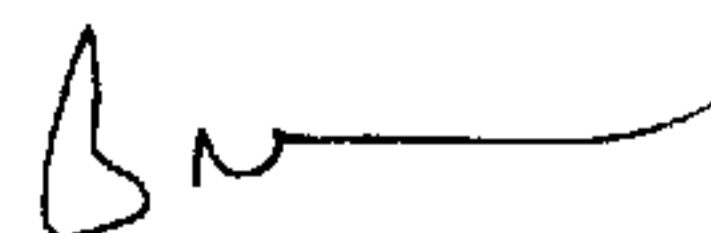
09. Respondents No. 1 to 6 filed a common reply wherein they specifically pleaded that in view of Memorandum of Understanding (MOU) dated 29.06.2000 between the petitioner and respondent No. 2, 200 shares of the petitioner stood transferred by way of transfer deed. Respondents further pleaded that petitioner ceased to have any right in respect of 200 shares in view of the MOU.
10. Respondents pleaded that the composite application filed by the petitioner is not maintainable. According to the respondents, petitioner is not a shareholder on the date of filing of the petition and, therefore, she cannot complain about the alleged acts of oppression and mismanagement in the first respondent company.
11. Respondents pleaded that there is inordinate and unexplained delay of fifteen years on the part of the petitioner in questioning the transfer of 200 shares. According to the respondents, in view of the judgment dated 12.01.2001 of Hon'ble IXth Upper District Judge, Indore, MP in Marriage Case No. 253 of 2000 petitioner has no claim over the movable and immovable properties of the first respondent company. Respondents allege that petitioner failed to produce original share certificate to show that the shares were purchased by her from her own





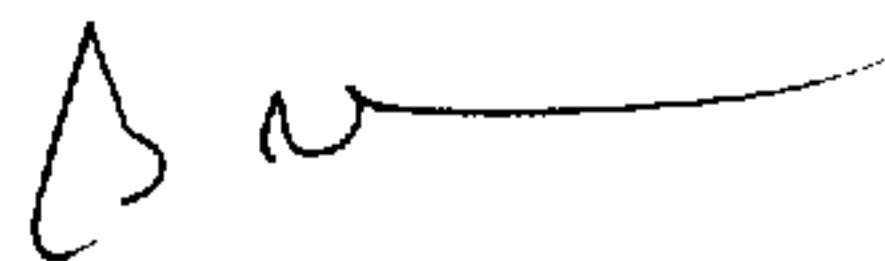
funds. Respondents also pleaded that petition is barred by limitation. Respondents pleaded that the petitioner approached the Tribunal with uncleaned hands. According to the respondents, petitioner is not residing in Hyderabad and residing in New Delhi having married to Mr. Niranjana Maheshwari. Respondents denied the allegations that the authorised share capital was illegally and unauthorizedly increased and shares were allotted to respondent No. 6 illegally and unauthorizedly. According to respondents, petitioner intentionally not filed annexures to MOU along with the petition. On perusal of part B of Annexure I of MOU it is evident that petitioner parted with the said 200 shares of the first respondent company and that is why petitioner did not raise any grievance in respect of 200 shares for about 15 years. Petitioner handed over share certificate and other items mentioned in the list of items to be transferred to respondent No. 2 on 29.06.2000.

12. According to the respondents, since the petitioner ceased to be a shareholder from the date of MOU, there is no need to issue notice of AGM or EOGM held by the first respondent company to the petitioner. Respondents further pleaded that due to efflux of time transfer deed handed over by the petitioner has been lost. Respondents denied the allegation that the lands of first respondent company were transferred to third party. Respondents denied that the market value of land of the first respondent company is Rs. 15.00 crores and fair value of the shares of the first respondent company is Rs. 1,20,000/-.

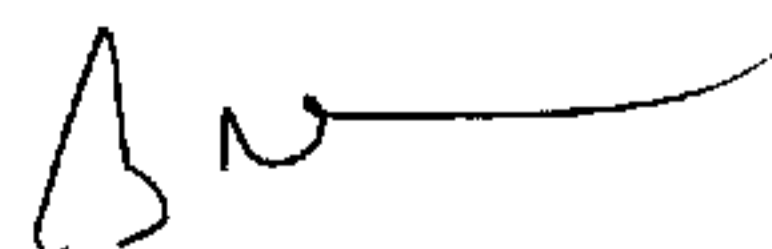


Respondent No. 3 was under bona fide belief that all the issues between the petitioner and respondent No. 2 are resolved. Respondent No. 3 is having possession of the original share certificate and she lost the transfer instrument.

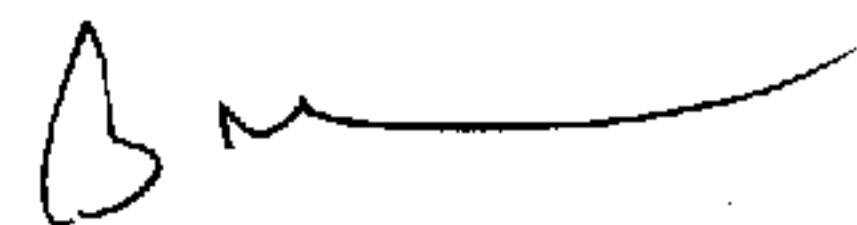
13. In the rejoinder petitioner pleaded that the transfer of shares of the petitioner to respondent No. 3 is in violation of Section 108 of the Companies Act as well as Articles of Association of the first respondent company. It is pleaded that petitioner had no knowledge of transfer of her shares till 10.02.2016, the date on which respondents wrote a letter to the Registrar of Companies, MP informing him about transfer of shares of petitioner to respondent No. 3. Petitioner also pleaded that the annual return of the first respondent company for the year ended 31.03.2013 was filed with the Registrar of Companies on 22.10.2013. According to the petitioner even assuming that she has got deemed knowledge from 22.10.2013, this petition filed on 24.11.2016 is within limitation and the delay of 31 days in filing the petition can be condoned. In the alternative, petitioner pleaded that her application for order of rectification was pending with the Registrar of Companies from 12.01.2016 till 27.10.2016 on which the Registrar of Companies advised the petitioner to file this petition before this Tribunal. According to the petitioner her application for rectification was pending with the Registrar of Companies, MP for 290 days.



14. In the additional affidavit filed by the respondents it is pleaded that respondent No. 3 addressed letter dated 08.02.2013 to the Board of Directors of the first respondent company stating that 200 equity shares of Rs. 100/- each bearing certificate No. 09 and Distinctive Nos. 801 to 1000 were duly handed over to respondent No. 3 along with duly executed transfer deed which respondent No. 3 kept in her custody, however, due to old and ailing age and ongoing disturbance due to the separation of her son and daughter in law she could not either present the same to the company for transfer on time or preserve the transfer deed. Respondent No. 3 in her letter dated 08.02.2013 has also given indemnity for effecting the transfer of shares in her name. Along with additional affidavit, respondents filed resolution of the Board of Directors dated 15.03.2013 whereby it was resolved to transfer the shares of petitioner to respondent No. 3.
15. In response to the additional affidavit, petitioner filed further affidavit wherein it is stated that the pleas taken in the affidavit by the first respondent company have not been taken in the reply and therefore they are not entitled to take such pleas and such please cannot be taken into consideration. Petitioner also pleaded that the letters filed along with additional affidavit of the first respondent company are nothing but concoction.
16. Basing on the pleadings of both the parties the following points emerge for determination in this case.



- (1) Whether the composite application for rectification of the name of the petitioner in the register of members of the first respondent company as well as for reliefs under section 241 and 242 are maintainable or not?
- (2) Whether any period of limitation is provided for claiming relief under Section 59 of the Companies Act and, if so, whether the petition is within time?
- (3) Whether the delay in filing the petition, if any, can be condoned or not?
- (4) Whether this Tribunal is having jurisdiction to grant relief under Section 59 of the Companies Act, 2013, in view of the plea of forgery of transfer deed taken by petitioner.
- (5) Whether the transfer of 200 shares of the petitioner in the first respondent company to the 3<sup>rd</sup> respondent has been done validly or not?
- (6) Whether increase in the authorised capital of the first respondent company from Rs. 1.00 lac to Rs. 10.00 lacs on 27.08.2015 is valid or not?
- (7) Whether the allotment of 9000 shares to respondent No. 6 on 29.01.2016 is valid allotment or not?
- (8) Whether there is siphoning of funds of the first respondent company and sale of assets of first respondent company by the respondents?



**Point No. 1**

17. On the aspect of maintainability of composite petition, learned Company Secretary for the petitioner relied on the following decisions: -

01	MANU/DE/878/2011 – Charanjit Khanna and Ors. vs. Khanna Paper Mills Ltd. and Ors.
02	MANU/CL/0023/2009 – C. Vasudevurthy vs. Associated Oxides P. Ltd. and Ors.
03	MANU/GJ/0006/1975 – Gulabrai Kalidas Naik and Ors. vs. Laxmidas Lallubhai Patel and Ors.
04	MANU/CL/0031/1999 T.N.K. Govindraju Chetty and Co. and Ors. vs. Kadri Mills (CBE) Ltd. and Ors.
05	National Company Law Appellate Tribunal – M/s. Canchi Metal & Ispat P. Ltd. vs. Surjeet Singh
06	National Company Law Appellate Tribunal Anup Kumar Agarwal vs. Crystal Thermotech Ltd.

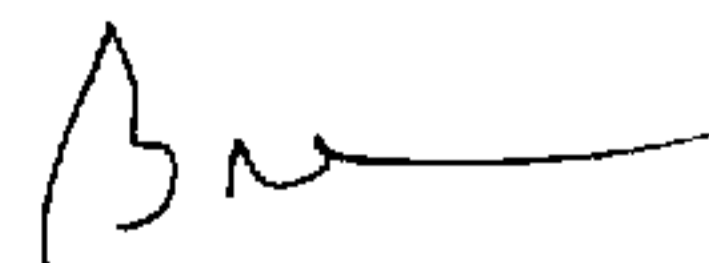
18. In the decision in Charanjit Khanna and Ors. vs. Khanna Paper Mills Ltd. and Ors. Hon'ble Delhi High Court held in para 11 as follows: -

“In my opinion, it cannot be said as a proposition of law that no composite petition under Sections 397, 398 and 111A of the Act is ever maintainable. In fact, in a large number of petitions filed under Sections 397 and/or 398 of the Act, the primary allegation of oppression and mismanagement is that the faction that is in control of the company has either intentionally reduced the rival faction to less than 1/10<sup>th</sup> of the total number of members of the company



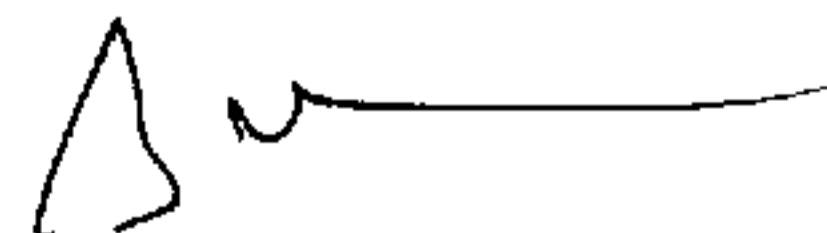
or removed the rival faction from the register of members. In such cases where allegation of oppression and mismanagement is inexplicably intertwined with the issue of maintainability of the petition under Section 399 of the Act, a composite petition has to be held as maintainable. To ask a petitioner to file two separate petitions in such circumstances would not only be unfair but would also result in unnecessary delay."

19. In that decision Hon'ble Delhi High Court also referred to the decision in Ved Prakash and Ors. vs. Iron Traders P. Ltd. and Ors. reported in (1961) 31 CC 122 (P&H) and observed that composite petition under Section 111A read with Sections 397/398 of the Act is not maintainable in any circumstances. On the other hand, Hon'ble Delhi High Court observed that in case of Ved Prakash and Ors. a separate petition for rectification of Register of Members had been dismissed.
20. In the same decision Hon'ble Delhi High Court referred to the judgement of the Hon'ble Gujarat High Court in Gulabrai Kalidas Naik and Ors. Laxmidas Lallubhai Patel and Ors. reported in (1997) 47 CC 151 (Guj) and held that it is not in all cases that a composite petition under Section 155 (now Section 111) and Sections 397/398 of the Act is not maintainable.



21. Hon'ble Company Law Board, Chennai in the case of Vasudevamurthy vs. Associated Oxides P. Ltd. and others reported in [2009]150 CompCas 339(CLB) relied upon the judgement of Hon'ble Supreme Court in Sangramsinh P. Gaekwad vs. Shantadevi P. Gaekwad wherein Hon'ble Supreme Court held as follows: -

"While exercising the power under Sections 397 and 402 of the Act, the Court is considering not only the relief that is sought for but also considers as to what is the nature of the complaint and how the same is to be rectified, in the interest of the company. Accordingly, the Company Law Board is empowered under Sections 397 and 398 read with Section 402 to consider the entire nature of the complaint of the petitioner before me, without any limitation on exercise of the power, with a view to bringing to an end the acts complained of in the petition, which shall also resolve the charges of substitution of the name of the third respondent in the place of the petitioner in the register of members, without sufficient cause, thereby appropriately remedying the whole of grievances of the petitioner, provided that any case is made out, despite non-invocation of the jurisdiction under Section 111 of the Act. Furthermore, substantial right of any aggrieved shareholder shall



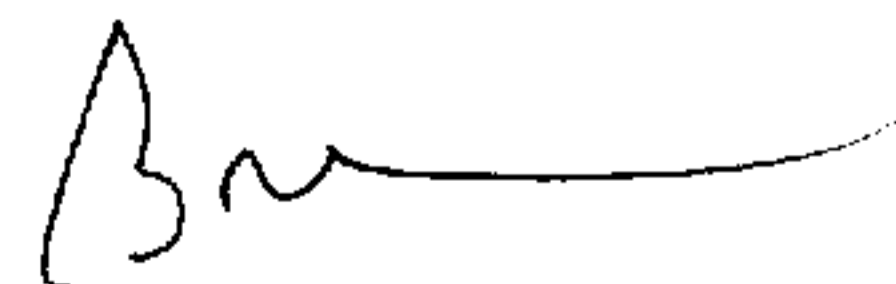
not be allowed to be defeated, on more technicality of any omission which is procedural in nature.”

22. In the decision in T.N.K. Govindaraju Chetty and Co. and Ors. vs. Kadri Mills (CBE) Limited and Ors. Hon'ble Company Law Board, Principal Bench in para 13 observed as follows: -

“If the petitioner's title to the membership is in dispute, and he has to seek relief under Section 155 for getting his name placed on the register of members to clothe himself with the rights of a member, it would be improper, till that dispute is decided, to permit such a person to maintain a petition under Section 397/398”

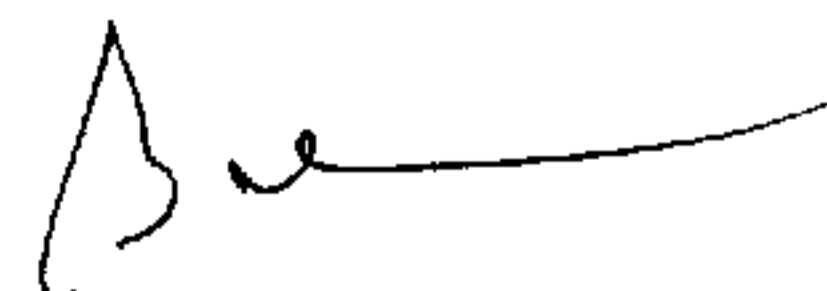
23. Hon'ble National Company Law Appellate Tribunal in Company Appeal (AT) No. 31 of 2016 in the case of M/s. Ranchi Metal & Ispat P. Ltd. vs. Surjeet Singh held that the crucial date for determination of requirements under Section 399 will be the alleged date of oppression and mismanagement in bringing down the shareholding below 1/10<sup>th</sup> of the total shareholding of the company took place.

24. Hon'ble National Company Law Appellate Tribunal in Company Appeal (AT) No. 17 of 2016 in the case of Anup Kumar Agarwal & Anr. Vs. Crystal Thermotech Ltd. & Ors. also took the same view distinguishing the decision of Hon'ble Supreme Court in Bhagwati Developers P. Ltd. and Rajamundrly Electric Supply Corporation Ltd.





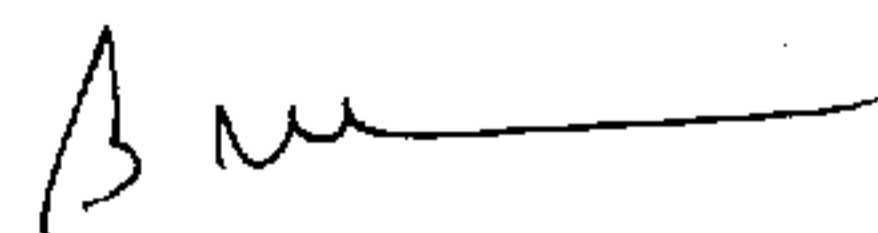
25. The grievance of the petitioner in this case is that her 200 shares in the first respondent company have been illegally transferred on 15.03.2013 although she has not signed any share transfer form. Petitioner further allege that respondents might have forged her signature on the transfer deed. Therefore, petitioner is questioning the transfer of her shares in the first respondent company and thereby she is asking the relief of rectification of Register of Members. Petitioner has also alleged certain acts of oppression and mismanagement in the nature of increasing authorised share capital, allotment of 9000 shares to respondent No. 6, siphoning of funds etc and such acts made petitioner to file this composite petition. In view of the aforesaid decisions relied upon by learned counsel for the petitioner, prayer for rectification of the register of members in order to include the name of petitioner as a shareholder and reliefs under Section 397 and 398 of the Companies Act, 1956 can be made at a time. Petitioner in this case is questioning the increase in the authorised share capital of the first respondent company and allotment of 9000 shares to respondent No. 6. Therefore, shareholding pattern as on 15.03.2013 has to be taken into consideration while considering whether the petitioner is entitled to file this composite petition. As on 15.03.2013 authorised share capital of the first respondent company was Rs. 1.00 lac divided into 1000 shares of Rs. 100/- each. Out of 1000 equity shares shareholding of the petitioner is 20%. Even



according to respondents, shares of the petitioner were transferred to Respondent No. 3 on 15.03.2013. Therefore, prior to the transfer of her shares, petitioner was holding more than 10% shareholding in the equity share capital of the first respondent company. Therefore, this composite petition filed by the petitioner is maintainable.

**Point No. 2**

26. There is no provision in the Companies Act, 1956 which says that provisions of Limitation Act, 1963 are applicable to the proceedings before the Tribunal. However, Section 433 of the Companies Act, 2013 says that provisions of Limitation Act 1963 are applicable to the proceedings before the Tribunal.
27. This petition is filed on 24.11.2016 under section 59 of the Companies Act, 2013 and under section 242 and 242 of the Companies Act, 2013 i.e. after the Companies Act, 2013 came into force.
28. No period of limitation is provided either in Section 59 or in Section 241 and 242 of the Companies Act, 2013.
29. Article 137 of the Limitation Act, 1963 provide any other application for which no period of limitation is provided elsewhere a period of three years is provided. Period of



limitation starts running from the date on which the right to apply accrues.

30. Article 113 of the Limitation Act, 1963 says that for any suit for which no period of limitation is provided elsewhere in this schedule, the period of limitation is three years and the period of limitation starts running when the right to sue accrues. Therefore, taking this composite petition either as an appeal, application or suit or as a petition, period of limitation is three years both under Article 113 and Article 137 of the Limitation Act, 1963. Period of limitation commences when the right to sue or right to apply accrues.
31. In view of the above discussions it can only be held that period of limitation for filing this composite petition under section 59 of the Companies Act and section 241 and 242 of the Companies Act, 2013 is three years and it starts running when the right to file the petition accrues. Therefore, crucial aspect in this case is when the right to sue apply accrues for the petitioner. The first and foremost contention of the petitioner is that she had no knowledge of the transfer of her shares till 10.02.2016 on which date the first respondent company wrote a letter to the Registrar of Companies and which letter was forwarded to petitioner by the Registrar of Companies on 10.08.2016.
32. It is the contention of the learned counsel appearing for the respondents that annual return of the first respondent company

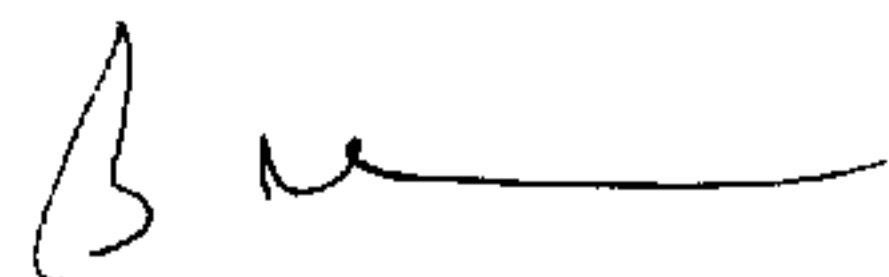


for the year ended 31.03.2013 was filed on 22.10.2013, it was available on the website of MCA and, therefore, 22.10.2013 onwards petitioner had got knowledge of transfer of her shares and period of limitation starts running from that date.

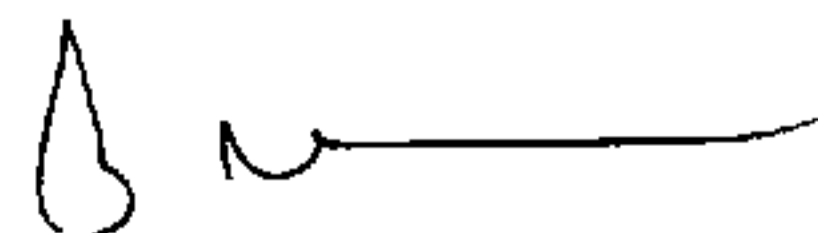
33. On this aspect learned counsel appearing for the respondents relied upon the decision in Dilboo (Smt) (Dead) by Lrs. and others vs. Dhanraj (Smt) (Dead) and Others reported in (2000) 7 Supreme Court Cases 702 and contended that the date on which annual return was placed on the website of ROC is deemed knowledge to the petitioner about the transfer of shares. In the decision in page No. 705 it is held as follows: -

“Whenever a document is registered the date of registration becomes the date of deemed knowledge. In other cases, where a fact could be discovered by due diligence then deemed knowledge would be attributed to the plaintiff because a party cannot be allowed to extend the period of limitation by merely claiming that he had no knowledge.”

34. Therefore, it can only be said that petitioner is having knowledge of transfer of her shares on 22.10.2013. Period of limitation is three years. This petition is filed on 24.11.2016. Therefore, there is a delay of 31 days in filing this petition.

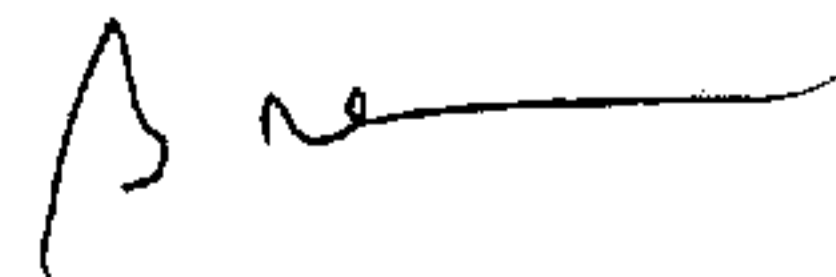


35. Contention of the learned counsel for the petitioner is that under section 14 of the Limitation Act, number of days during which complaint of the petitioner was pending with ROC has to be excluded in computing actual delay. Petitioner filed application with ROC on 12.01.2016. A perusal of the letter dated 12.01.2016 which is available at page 93 of the petition disclose that petitioner made complaint to ROC alleging that she has not received her share certificates from the first respondent company which shows that the management of the company has mala fide intention to cause pecuniary loss to her and to deprive her legal rights. Further, the first respondent company is trying to dispose of assets of the company and made a request to ROC to order investigation against the company. By any stretch of imagination this letter cannot be treated as a letter asking ROC to rectify the Register of Members of the first respondent company. Letter dated 12.01.2016 addressed by the petitioner to ROC and letter dated 24.08.2015 addressed by the petitioner to the Board of Directors of the first respondent company disclose that for the first time only on 24.08.2015 she asked the first respondent company for share certificate of her 200 equity shares of the first respondent company. It is already held that by 22.10.2013 petitioner has got knowledge of the transfer of shares. When such is the case it is not known what prevented the petitioner from claiming her shares or from questioning the transfer of her shares till she filed this petition. Even on 24.08.2015 the petitioner did not choose to mention that her shares were transferred illegally. On the other hand,



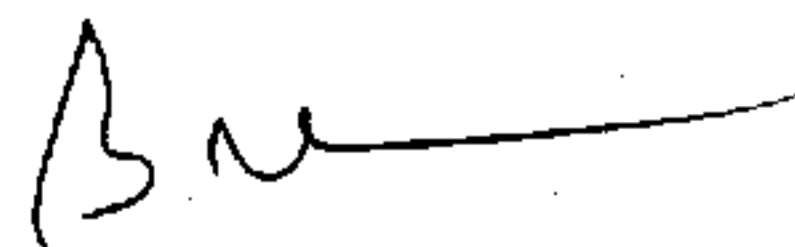
she requested the company to provide share certificates to her. Therefore, what is pending before ROC is a request made by the petitioner to order investigation against the first respondent company. ROC by his letter dated 04.02.2016 forwarded the complaint of the petitioner dated 12.01.2016 to the first respondent company. Petitioner in her letter dated 19.07.2016 for the first time requested ROC to restore her shareholding in the first respondent company with necessary corrections in the Register of Members. First respondent company by letter dated 10.02.2016 informed ROC stating that by virtue of family settlement dated 29.06.2000, after receiving valuable consideration from her husband, she transferred all her claims including her shares and handed over her share certificate to Respondent No. 2. ROC by letter dated 10.08.2016 forwarded the letter of the first respondent company dated 10.02.2016 to the petitioner. Petitioner again by letter dated 10.10.2016 filed a complaint with ROC for rectification of Register of Members under Section 58 and 59 of the Companies Act, 2013. ROC by letter dated 27.10.2016 informed petitioner that he has no jurisdiction for adjudication of the dispute raised in the letter of petitioner dated 10.10.2016.

36. Basing on the aforesaid material, learned counsel for the petitioner contended that the petition of the petitioner is pending before ROC from 12.01.2016 till 27.10.2016 i.e. for a period of 290 days and, therefore, those 290 days has to be excluded for computing the period of limitation.



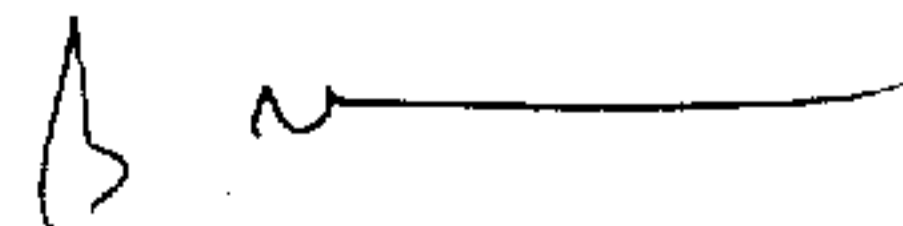
37. On this aspect, learned counsel appearing for the respondents contended that ROC is not a Court and, therefore, the period that was taken by ROC in redressing the grievance of the petitioner cannot be excluded while computing the period of limitation. It is further contended by Sr. Counsel appearing for the respondents that in fact it is only in the letter dated 10.10.2016 petitioner claimed for rectification of Register of Members and prior to that no such request was made by the petitioner. Application of the petitioner dated 10.10.2016 was disposed of by ROC on 27.10.2016 and, therefore, request of the petitioner for rectification in the Register of Members remain pending with ROC only for a period of 17 days but not 290 days even assuming that the period taken by ROC has to be excluded in computing the period of limitation.

38. On this aspect learned counsel for the petitioner relied upon the decision of the Hon'ble Supreme Court reported in AIR 2000 SC 2023 in P. Sarathy vs. State Bank of India. In that decision it is held by Hon'ble Supreme Court that section 14 of Limitation Act, 1963 does not speak of a "civil court" but speaks only of a "court". It is further held in that decision that it is not necessary that court spoken of in Section 14 should be a "civil court". Any authority or Tribunal having the trappings of a court would be a "court" within the meaning of this Article. In that case Dy. Commissioner of Labour who deals with appeals under Section 41 (2), Tamil Nadu Shops and Establishment Act, 1947 is held



to be a court within the meaning of Section 14 of the Limitation Act, 1963. Nowhere in the Companies Act it is said that ROC is an adjudicating authority in respect of transfer of shares. Therefore, ROC acting under the Companies Act as a regulating authority cannot be equated with that of Dy. Commissioner of Labour who deals with appeals filed under Section 41 (2) of Tamil Nadu Shops and Establishment Act, 1947. Therefore, decision of Hon'ble Supreme Court is not applicable to the facts of this case. ROC cannot be treated as a "court" within the meaning of Article 14 of the Limitation Act, 1963.

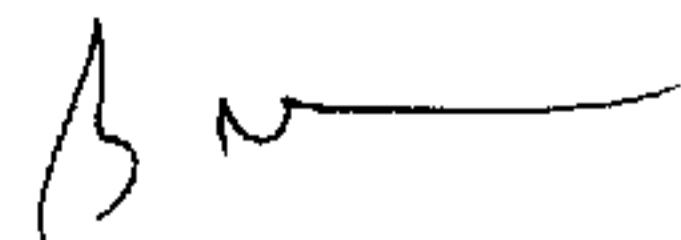
39. Another decision relied upon by learned council for the petitioner on this aspect is of Shripal Jain vs. Torrent Pharmaceuticals Ltd. and Ors. reported in (1995) 4 SCC 590. In that decision, Hon'ble Supreme Court gave direction to the Registrar of Companies to hold an inquiry under Section 84 (4) of the Companies Act read with the Companies (Issue of Share Certificates) Rules, 1960 and take a decision himself in the matter. A reading of the aforesaid judgements disclose that the question involved is of issuance of duplicate share certificates.
40. Section 84 of the Companies Act deals with certificate of shares. Sub Section 4 of Section 84 deals with issuance of duplicate certificates or renewal of share certificate. The provision corresponding to Section 84 of the Companies Act, 1956 is Section 46 of the Companies Act, 2013. Section 46 (1) of the Companies Act, 2013 says that a certificate, issued under the





common seal of the company, specifying the shares held by any person, shall be prima facie evidence of the title of the person to such shares. Section 46 (2) deals with issuance of duplicate shares in case original certificate is proved to have been lost or destroyed; or in case if share certificate is defaced, mutilated or torn and is surrendered to the company. Either in Section 84 (4) of the Companies Act, 1956 or in Section 46 of the Companies Act, 2013, no power is given to ROC to issue duplicate share certificates. Power to issue duplicate certificate only lies with Company and its Board of Directors. Therefore, the decision of Supreme Court only refers to the case of issue of duplicate certificate and not with the powers of ROC. It does not relate to ROC which is a regulating authority and not for rectification of Register of Members. In that view of the matter, aforesaid decision is not applicable to the facts of this case.

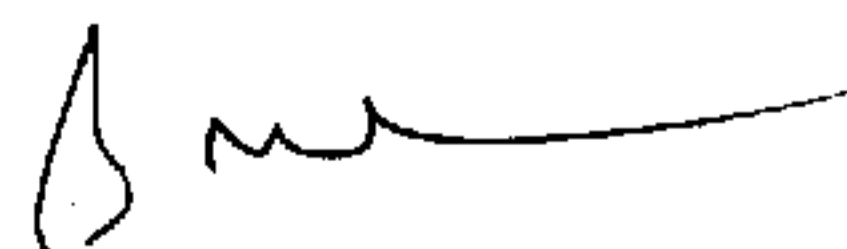
41. In view of the finding that ROC is not a "court", time spent by the petitioner before ROC cannot be excluded for computing the period of limitation. No document is filed to show that letter dated 19.07.2016 addressed to ROC, MP was received by ROC, MP and reply was filed by ROC. Therefore, letter dated 19.07.2016 cannot be taken into consideration. Even assuming that time taken by ROC can be excluded for petitioner made a specific reference for rectification of Register of Members in the letter dated 10.10.2016 which was replied by ROC on 27.10.2016 and, therefore, the time consumed by ROC is only



17 days. Even that 17 days is excluded, still this petition is not within limitation.

**Point No. 3**

42. The next point raised by the learned counsel for the petitioner is delay of 31 days can be condoned for filing the composite petition.
43. Learned counsel appearing for the petitioner relying upon the decision reported in AIR 1988 SC 897 in G. Ramegowda, Major and Ors. vs. Special Land Acquisition Officer, Bangalore and Basavalingappa vs. Special Land Acquisition Officer, Bangalore contended that the petitioner cannot be deprived of the reliefs on technicalities and barely on the ground of delay.
44. A reading of the aforesaid judgement clearly goes to show that there was a delay on the part of the Land Acquisition Officer in preparing the appeals before High Court and Hon'ble High Court in application under Section 5 of the Act condoned the delay. As against the said order of Hon'ble High Court of Karnataka claimants preferred civil appeals before Supreme Court of India.
45. What was considered by Supreme Court of India in the aforesaid decision is whether the delay on the part of the Government officials in preparing the appeals can be attributed to the state and thereby suffer the public interest. Supreme Court of India held that if the appeals brought by Government are lost for such defaults, no person is individually affected, but what, in ultimate analysis, suffers is public interest. Hon'ble Supreme Court also



further held that implicit in the very nature of Government functioning is procedural delay incidental to the decision making process. Therefore, Supreme Court of India refused to interfere with the order of Hon'ble High Court of Karnataka in condoning the delay in filing appeals by Land Acquisition Officers.

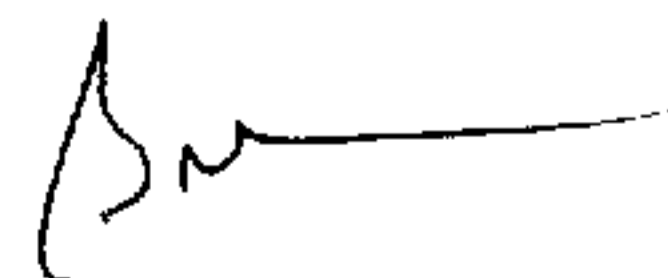
46. In the case on hand, no application is filed seeking condonation of delay in filing the composite petition. There is no prayer in the composite petition seeking condonation of delay. It is only during the course of arguments plea of condonation of delay has been raised.
47. It may be said that in a court of equity a separate application to condone the delay is not necessary, but, at the same time at least there must be a prayer by the petitioner to condone the delay in the main petition giving reasons for the delay. However, in the limitation part of the petition it is stated that even if there is some delay in presenting the petition for order of rectification it may be condoned in the interest of justice and equity. Now it has to be seen what is the reason for the delay and what is the conduct of the petitioner in approaching this Tribunal for filing the petition for rectification of Register of Members. Admittedly, petitioner is the divorced wife of respondent No. 2. Admittedly, divorce was granted to the petitioner on 12.01.2001 basing on the MOU dated 29.06.2000. MOU is produced by the petitioner as Ex. "E" in page 87 and 88 of the petition. The judgement of the Hon'ble 9<sup>th</sup> Upper District Judge, Indore is also available at page No. 89 to 91 of the petition. In the MOU filed along with

the petition, part "A" is not produced but respondents along with their reply produced part "A", Annexure 1 and 2 at pages 230 and 231. Parties to the MOU are petitioner and 2<sup>nd</sup> respondent. It is stated in the MOU that petitioner is holding items shown in as Annexure I (part "A" and "B") and second respondent is holding items shown in Annexure 2. It was agreed between the parties to exchange the items mentioned in Annexure 1 and 2 with each other within three days of sanction of decree for divorce from the Hon'ble Court. A perusal of part B of Annexure 1 show that shares worth Rs. 20,500/- were held by Sangeeta and as per the agreement she has to exchange the same with the items in Annexure 2 of respondent No. 2. This MOU is not at all disputed by the petitioner. It is only on the basis of MOU marriage was divorced.

48. It is the case of respondent that soon after granting of decree of divorce, petitioner handed over the share certificate along with duly signed transfer form to her husband and, thereafter, those shares were transferred in the name of 3<sup>rd</sup> respondent on 15.03.2013. Here we are not going to discuss and decide the validity of the transfer of shares or the manner in which the transfer of shares took place and whether the provisions of Section 108 of the Companies Act has been followed or not. Here the question is only on the aspect of the delay on the part of the petitioner and the conduct of the petitioner in not even asking the share certificates till 24.08.2015, on which date for the first time the petitioner asked Directors of the Company to



give her share certificates. The delay of nearly fifteen years in not raising any issue in respect of her shareholding in the first respondent company goes to show that the petitioner abandoned her shares in the first respondent company, since the petitioner and her husband entered into MOU at the time of taking divorce. The petitioner, for the first time asking for share certificate on 24.08.2015 goes to show that she did not choose to exercise rights for her shares for fifteen years. Petitioner also did not choose to participate in the affairs of the first respondent company for nearly 15 years. All of a sudden, in the year 2015, petitioner made a claim for her shares stating that the transfer is invalid and further stating that her signatures were forged in the transfer deeds. Therefore, keeping these facts in mind, it cannot be said that there are sufficient reasons to condone the delay. The exercise of giving a complaint to ROC on 10.10.2016 on the ground that she has no knowledge about the transfer of shares till such date is nothing but a pretext to cover up the latches and to prove that the petition is within the limitation period. This kind of exercise cannot be approved by court of equity by condoning the delay. Delay will be condoned only if there are sufficient reasons. When the petitioner is guilty of latches and delay, it is very difficult to say that there is sufficient cause to condone the delay, howsoever the small it is. In the case on hand the delay on the part of the petitioner not only give to raise a view that she had abandoned her rights but also affects the rights of other parties. In the case on hand, after the shares of the petitioner were transferred, there was a



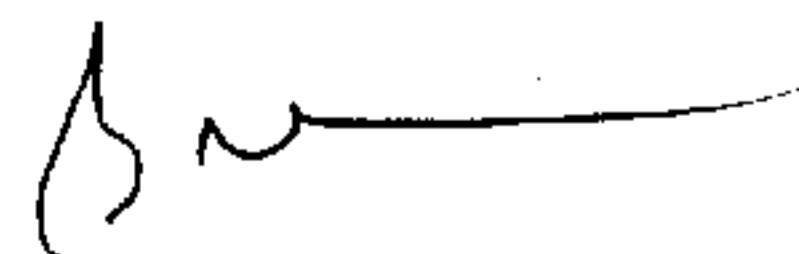
decision to increase the authorised capital and there was a decision of the company to allot 9000 shares to respondent No. 6. In case if the delay is condoned and if name of the petitioner is rectified in the register of members, then there is a cause for the petitioner to say that increase in the share capital and allotment of 9000 shares to Respondent No. 6 is illegal and if such course is adopted it would be detrimental to the interest of Respondent No. 6 and to the company also. Therefore, it is not a case where delay caused by the petitioner would not affect rights of the other parties also in case if the delay is condoned. Keeping the above said facts in mind, this Tribunal is of the considered view that there are no reasons to condone the delay. Moreover, the petitioner is not entitled for any relief on the ground of delay and laches.

**Point No. 4**

49. Contention of the learned council appearing for the respondents is that this Tribunal has no jurisdiction to entertain the plea of forgery of transfer deeds put forward by the petitioner. Learned council appearing for the petitioner contended that Section 59 of the Companies Act provides jurisdiction to this Tribunal to pass an order of rectification in case where the name of any person after having been entered in the register is without sufficient cause omitted from the register.
50. There is no dispute that, under Section 59 of the Companies Act, 2013 this Tribunal can order rectification of register of



members in case name of a member is removed from the Register of Members without sufficient cause. In the case on hand, according to the respondents, name of the petitioner is removed from the register of members on the basis of transfer deed executed by the petitioner. The plea of the petitioner is that the transfer deeds are forged documents. Now the question is that whether the plea of forgery can be gone into by the Tribunal or the parties have to be relegated to Civil Court. On this aspect learned council appearing for the respondents relied upon the judgement of Hon'ble Supreme Court in Ammonia Supplies Corporation (P) Ltd. vs. Modern Plastic Containers P. Ltd. reported in (1998) 7 Supreme Court Cases 105. In that judgment Hon'ble Supreme Court held that when the dispute relates to the peripheral field of rectification, then the Company Court under Section 155 will have exclusive jurisdiction and jurisdiction of Civil Court will be impliedly barred. But if the finding is otherwise, Civil Court's jurisdiction is not excluded. In the judgement Hon'ble Supreme Court held that jurisdiction of the Company Judge is discretionary. In the case on hand, allegation of forgery of transfer deed is made by the petitioner. The transfer deed as such is not available before this Tribunal even to compare the signature of petitioner. Plea of forgery has been raised by the petitioner nearly after fifteen years. Therefore, it is a complicated question of law and it cannot be solved in a summary manner by exercising jurisdiction of Section 59 of the Companies Act. It is a matter which has to be resolved only after taking evidence of both the parties.



Therefore, in the given facts and circumstances of the case, this Tribunal cannot exercise its jurisdiction to order rectification in the Register of Members in view of the plea of the petitioner that her signature has been forged on transfer deeds.

51. As already said, this petition is not within time and petitioner is not entitled for any relief of rectification of Register of Members on the grounds of delay and latches.
52. When the relief of rectification of Register of Members is barred by limitation and hit by delay and latches, there is no question of examining whether the transfer of shares took place according to the provisions of the Companies Act and Articles of Association of the Company. Further, when the relief for rectification of Register of Members is barred by limitation, petitioner is not entitled to seek reliefs for oppression and mismanagement.
53. In view of the above discussion, petition is dismissed. There is no order as to costs.

  
**BIKKI RAVEENDRA BABU**  
**MEMBER JUDICIAL**

*Pronounced by me in open court on the 14<sup>th</sup> day of November 2017.*