

NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH, MUMBAI

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH, MUMBAI.

MA 85 OF 2017 IN CP No. 26/397-398/CLB/MB/MAH/2015

In the matter of Section 397, 398, 399 read with Section 402 and 403 of the Companies Act, 1956.

AND

IN THE MATTER OF M/S. TELEX LINKS INDIA PVT. LTD.

Versus

M/S. SYSLOGIC MOBITECH PVT. LTD. & ORS.

CORAM : SHRI M.K. SHRAWAT
Member (Judicial)

M/S. TELEX LINKS INDIA PVT. LTD. : Petitioner

Versus

M/S. SYSLOGIC MOBITECH PVT. LTD. : Respondent.

Represented By :

1. Shri Rishi Sood
2. Pratap Nimbalkar



Advocate for Petitioner

1. Mr.G.J. Srivastava,

Advocate for Respondent.

Interim Order dated : 19.06.2017

1. This application has been filed by the Respondents on 5th of March 2017 challenging the maintainability of the main Petition (CP 26/397-398/CLB/MB/2015). To keep the brevity in mind only the relevant paragraphs from the application are reproduced below:-

"4. That Applicants/Respondent No.1 Company and Respondent No.2 & 3 in the capacity of shareholders/members in Respondent No.1 Company have during the proceedings before Hon'ble Company Law Board on 23rd April, 2015 vide their preliminary objection dated 21 April, 2015 had raised objection before the then Hon'ble Company Law Board with respect to the Petitioner's claim of holding 60% equity shares in the Respondent No.1 Company as false and baseless and denied in express terms Petitioner's said claim of 60% equity shares as the Respondent No.2 & 3 claimed to have 100% (50% each) equity shares in the Respondent No.1 Company and further stated that Respondent No.2 & 3 have never sold any of their said shares to the Petitioner Company and also stated that the Petitioner's claim of 60% equity shares in Respondent No.1 Company was without any cogent evidence attached with the said Petition - a mere misleading and unstamped photocopy of the Share Holder's Agreement dated 14th January 201, which was no evidence of the said claim of Petitioner, in support of said claim of 60% equity share holding.

M/S

14. *That the Petitioner Company have been caught red handed in their own net as would be elucidated in the subsequent lines. As referred supra that Petitioner have in their Rejoinder dated 19th May 2015, made an averment that their share certificates in question were misplaced which a blatant second lie to cover first lie of purchase of share in Respondent No.1 Company and there is yet another means – besides no evident of consideration paid, to detect this lie of the Petitioner and that is: Had there been truth in the Petitioners story that they were in possession or issued with the said share certificates then there were only two possibilities in the petitioner's story of misplaced share certificates; **one** – the share certificates were either lost prior to filing the Petition or **two** – lost after filing the Petition. **First possibility** – if the Share Certificates were lost prior to filing the Petition the Petitioner would have searched for Share Certificates before filing their original Petition and the fact of missing of the same would have found a place in the Original Petition itself with requisite FIR particulars and application to Respondent No.1 for issue of duplicate share certificates as their justification for not attaching the same in support of 60% equity shares. **Second possibility** – if the Share Certificates were lost after filing the Petition the Petitioner would have conveniently attached a copy of the Share Certificates with the petition in support of their claim of shareholding instead of attaching an invalid SHA. The Petitioner and their legal experts being fully aware that SHA (Share Holder's Agreement of the kind) is no evidence to establish claim of share holding in a company, have intentionally attached the same in support of their shareholding claim just to mislead the Hon'ble Tribunal and threaten and intimidate the Respondent by indulging in frivolous litigations, thus have mala-fidely attempted to prove their fake claims and further abuse the process of law to mitigate their unjust, mala-fide, obsessed and ulterior design to establish command and control over the Respondent No. 1 Company being a small and financially weak company for the reasons best known to them. The entire saga of their Petition is full of such evidences as to how the Petitioners were desperate to establish illegal command and control over the Respondent No.1 Company by applying all possible tactics."*

- 1.1 An argument has been raised from the side of the Applicant (Respondent to the main Petition) that after an order was passed by the NCLT dated 1st March 2017 through which the Petitioner was allowed to carry out certain amendment in the main Petition a great apprehension is in the mind of the Respondents that the Petitioner may take undue advantage of the amended Petition while pleading the case. The accusation is that the Petitioner had already transferred the shares due to which the present position is that the entire 100% shareholding vest with the Respondents. The maintainability of the main Petition is therefore challenged to stop the Petitioner at the preliminary stage not to proceed further with the claim of 60% shareholding. The Petitioner should not be allowed to proceed with the matter in a situation when the shareholding is less than the limit prescribed under section 244 of the Companies Act 2013. *mas*

2. From the side of the answering Respondent (Petitioner in the main Petition) it is pleaded that number of years have passed but so far the question of maintainability had never been raised by the Respondents. The Petition was filed way back in the year 2015 but this question was never raked up by the Respondents. It is informed that the question of holding 60% shares is subjudice, yet to be decided, hence the objection raised is bad in law. Learned Representative has referred an order of CLB dated 23rd April 2015, relevant portion reproduced below:-

"10. I do not find any prima facie evidence showing that the Petitioner Company is a shareholder/member of the Respondent No.1 Company. There is a Shareholders Agreement available on record, but whether the shares were transferred or not is a question still to be determined. The Petitioner Company has failed to place on record any material, either in the form of Annual Return filed by the Company or Transfer Deeds under Section 108 of the Act or extract of Member of Register of the Company or any other material to show that the Petitioner Company is a shareholder/member of the Respondent No.1 Company. Merely on the basis of SHA/SPA, the Petitioner Company claiming that it is a member of the Respondent No1 Company, is not competent to file this Petition. Furthermore, the directorial complaints cannot be subject matter of a Petition filed under Section 397/398 of the Act until it is shown that the Company is in the nature of glorified partnership where the principles of partnership are applicable."

3. Heard the submissions of both the sides at some length in the light of the pleadings on record. Also perused the connected evidences. It is correct that number of years have gone when this litigation was started. Since then lot of water had flowed under the bridge. The objector had never raised this question of maintainability. The question of maintainability is a preliminary question to be decided generally at the time of "admission" of a Petition. Per contra, it is also true that the Petitioner was allowed to amend the main Petition. Nevertheless, the apprehension in the mind of Respondents appears to be premature. Merely by granting amendment to the main Petition appears to be not justifiable on the part of the Respondents to pre-judge the outcome of the litigation. Undisputedly the issue of correct percentage of shareholding is yet to be decided. Naturally, only on careful appreciation of corroborative evidences the controversy revolving around the facts can be decided. This view otherwise gets support from the observation of the CLB order dated 23rd April 2015, reproduced supra, wherein the controversy was duly noted, that merely on the basis of SHA/SPA, the Petitioner Company claiming that it is a member of the Respondent No.1 and whether the shares were transferred or not is a question still to be determined.

- 3.1 One has to keep in mind a distinction between the **two situation**, one is that the Petitioner admittedly not holding the requisite number of shares. The other situation is when the holding of Shares by itself is under controversy. In the case of first situation the preliminary objection of maintainability may survive,

MES

but in the case of second situation first the merits are to be decided then only automatically the question of maintainability get resolved. The allegation and counter allegations as raised in this case are beyond the domain of summarily rejection of the Petition a complex finding on facts can only be decided after full trial, therefore it is unfair to hold without appreciating the totality of the evidences facts that share- holding of the Petitioner is less than the prescribed limit.

4. In the light of the above discussion the impugned preliminary objection is hereby rejected. The Petition in question had already been admitted way back in the year 2015 and since then on regular basis listed for hearing thereby giving chance to all the parties to finalise the pleadings by furnishing respective evidences. As a result, there is no reason to hold that Petition at this stage not Maintainable. **Now to be listed for hearing on 29th June 2017.** Inform the parties.

Date : 19.06.2017.

Sd/-
M.K. SHRAWAT
Member (Judicial)