

In the National Company Law Tribunal  
Mumbai Bench.

Company Application No.13/58(4) & 59/CLB/MB/MAH/2015

Under Section 58(4) & 59 of Companies Act, 1956

In the matter of

Shri Kamlesh Kalidas Shah : Petitioner

V/s

State Bank of India : Respondent

Order delivered on: 04.11.2017

Coram: 1. Hon'ble Shri M.K. Shrawat, Member (Judicial)  
2. Hon'ble Shri Bhaskara Pantula Mohan (Judicial)

For the Petitioner : 1. Mr. M.S. Bhardwaj,  
2. Mr. V.P. Varma, Advocates;  
3. Mr. Kamlesh K. Shah, Petitioner in person.

For the Respondent : 1. Ms. Anita Yadav,  
Asstt. Manager (Law), SBI representing  
Respondent No.1 & 2;  
2. Ms. Savita Malkampate, Advocate for  
Respondent No.1 & 2;  
3. Mr. Kunjal Dalal, Practicing Company  
Secretary for Respondent No.5;  
4. Nitin Champaklal Shah;  
5. Poonam Bhagwe, Sr. Manager,  
Datamatics Financial Services Limited.

Per M.K. Shrawat, Member (Judicial).

**ORDER**

1. This Petition was filed before the then CLB in the month of March 2015 by invoking the provisions of section 58(4) of Companies Act 2013 for transfer of shares claimed to have been purchased by the Petitioner.
2. Facts in brief as stated in the Petition were that the Petitioner is in the business of **share brokerage as a share broker**. The Petitioner had purchased 200 shares of State Bank of India (Respondent No.1) through Ahmedabad Stock Exchange of 50 denomination each from the following persons:-

"  
(i) 50 Shares From Rukhmaniben Babulal ( Folio No. SB25412954 ) Certificate no. 1634923  
Dist. No. 333094801 To 333094850 and'

(ii) 50 Shares from Urvi B. Shah Share Certificate No. 1643232 ( Folio No. SB 2549950 ) Dist.  
No. 333510251 to 333510300 and;

(iii) 50 Shars from Mr. Jolly Champaklal Shah, Share certificate No. 871509 ( Folio No. SB  
1797766 ) Distt. No. 294924101 to 294924150 and;

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(iv) 50 Shares from Mr. Kamlesh Bhuderji Thakker, Certificate No. 386109 ( Folio No. SB 1329225, Distt. No. 270654101 to 270654150.”

3. The above listed shares of State Bank of India totalling 200 in number, claimed to have been purchased through Ahmedabad Stock Exchange. The Petitioner had made an attempt to get some shares transferred in his name, however, due to mismatch of signatures the Bank had refused to transfer those shares and put “Stop mark”. We shall discuss the merits and facts of the case but before that a legal question has been raised that this Petition is not **maintainable** against the **State Bank of India being not incorporated as a Company under the provisions of the Companies Act**. This legal question is to be answered first, because of the reason that the Respondent No.1 i.e. State Bank of India, had vehemently opposed the maintainability of this Petition. From the side of the Bank, Learned Representatives were present time to time and pleaded to dismiss this Petition because no cause of action had arisen under the facts against the **Bank being not a Company as defined under the Companies Act**.
4. Arguments from the sides of State Bank of India on the question of Maintainability can be summarised herein below :-
- a. It is pleaded that the SBI is not incorporated under the provisions of Companies Act, 2013. It is constituted under the special enactment i.e. State Bank of India Act, 1955. Because of this reason, the provisions regarding the transfer of shares as enumerated under Companies Act, 2013 do not apply to the Bank, hence the Company Law Board (CLB) / National Company Law Tribunal (NCLT) had no jurisdiction to entertain the dispute pertaining to the transfer of equity shares issued by State Bank of India. Learned Representative of the Bank has placed the said statute to demonstrate that being an independent Act cannot be superseded by any other Act.
  - b. Placed before us the State Bank of India Act, 1955 wherein as per the preamble this Act was constituted for the purpose:-

“AN ACT

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To **constitute** a State Bank of India, to transfer to it the undertaking of the Imperial Bank of India and to provide for other matters connected therewith or incidental thereto.

(8<sup>th</sup> May, 1955).

Whereas for the extensions of banking facilities on a large scale, more particularly in the rural and semi-urban areas, and for divers other public purposes it is expedient to constitute a State Bank for India, and to transfer to it the undertaking of the Imperial Bank of India and to provide for other matters connected therewith or incidental thereto;

Be it enacted by Parliament in the Sixth Year of the Republic of India as follows:-" ( highlighted few words by us )

- c. Further it is pleaded that vide Chapter-II Section 3 Sub-Section 2 it is prescribed that :-

### **3. Establishment of the State Bank –**

(1) A Bank to be called the State Bank of India shall be **constituted to carry on the business of banking** and other business in accordance with the provisions of this Act and for the purpose of taking over the undertaking of the Imperial Bank.

"(2). The [Central Government] together with such other persons as may from time to time become shareholders in the State Bank in accordance with the provisions of this Act, shall, so long as they are shareholders in the State Bank, **constitute body corporate** with perpetual succession and a common seal under the name of the State Bank of India, and shall sue and be sued in the name."

- d. Therefore, the argument is that as per Sub-section 2 (supra) State Bank can sue and can be sued only in respect of persons as specified therein. Since the Petitioner is not within the ambits of the said provisions hence not entitled to raise any cause of action against the Bank.
- e. Under this Act ( SBI Act ) vide Chapter IV Section 10, provisions are in respect of '**Transfer of Shares**', Section 13 is for '**Register of shareholders**'. Further vide '**The State Bank of India General Regulations , 1955**' in Chapter II under Rule 15 is 'Transfer of Shares' and **under Rule 16 is for "Power to Refuse or Suspend Transfers"** and Rule 19 is for "Transmission of Shares in the event of death, insolvency etc. of a Shareholder". It is thus

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argued that the SBI Act is a complete Code in itself hence not to be guided by any other Act. The SBI Act has prescribed power to refuse or suspend transfer and its Executive Committee is enshrined with the authority to decline to register any transfer of shares. This authority of refusal was correctly exercised in the present case, hence need not to be challenged under the Companies Act.

- f. In support of the arguments an Order of the Company Law Board, Western Region, Mumbai, dated 03<sup>rd</sup> May, 2007 pronounced in the case of Tirupati Trade Communication Pvt. Ltd. Vs. State Bank of India and Others (Company Petition No.20/111A/CLB/WR/2006 ( authored by respected Ld. Member Mr. C.D. Paik ) is referred to demonstrate that an opinion has been expressed by the Learned Member of the then CLB as under :-

*"On the plain reading of the definition of company in the Companies Act, 1956 it is seen that the State Bank of India is neither formed nor registered under the Indian Companies Act prior to the enactment of Companies Act, 1956. Since the State Bank of India is not a Company within the meaning of Section 3 of the Companies Act, I am of the view that the provisions of the Companies Act, 1956 shall not be applicable to the SBI. The Petitioner has filed the present Petition under the impression that the SBI is a company under the Companies Act, 1956. As I have held that the SBI is not a company, the present Petition filed under Sec.111A of the Companies Act, by the Petitioner against the SBI is not maintainable. The CLB has no jurisdiction to pass order under Sec.111A against the SBI. However, the Petitioner company is at liberty to approach SBI for relief in accordance with law. The petition is accordingly dismissed and no order to cost."*

- g. The argument is that a view has been expressed by an authority constituted under the Companies Act and expressed a view that the SBI is not a Company, hence the Petition against the SBI is not maintainable, therefore, the said order has to be applied on this Petition, which was contested under identical circumstances.

**5. Arguments from the side of the Petitioner on the question of Maintainability:-**

- a. The first argument is that as per **Section 1(4)(c) of the Companies Act, 2013**, the provisions of the Act is to apply on Banking Companies, hence the State Bank of India is also within the ambit of this Act.

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- b. The second argument is that there is no inconsistency among SBI Act 1955 and Companies Act 1956 / 2013. The procedure for transfer of shares, refusal of transfer, registration of shareholder, etc. are not in variance with each other. Therefore, the Companies Act can apply on those issues which can be dealt without creating distinction between the provisions of two Acts.
- c. The next argument is that the erstwhile CLB had taken **divergent views** about the applicability of provisions of Companies Act on SBI. In one such Order, CLB, Western Region, Mumbai, in the case of Ms Natali Dashrathbhai Patel Vs. State Bank of India, (Company Petition No.13/111A/CLB/WR/2005), Order dated 14.06.2006 ( also authored by that very respected Ld. Member Mr. C.D. Paik) has directed the SBI to issue duplicate shares in the name of the Petitioner, although the question of jurisdiction to rectify the Register of Members by SBI was raised.

"2. ----

*The Petitioner purchased 200 shares from her family members and sent the share certificates and share transfer deed to SBI for transfer on 14.7.2001. M/s.MCS Limited (Respondent No.2), the transfer agent of SBI informed the petitioner that the Respondent No.3 lodged the said shares for transfer in his name. The petitioner requested the Respondent No.2 not to transfer 200 shares in the name of Respondent No.3. As advised by the Respondent No.2, the petitioner lodged FIR with the police and filed Civil Suit being Suit No.380/2001 before the Civil Judge (S.D.) Surat. The Respondent No.2 informed the Petitioner that 150 shares are already transferred to Respondent No.3 and 50 shares are pending for transfer. The Respondent No.2 in the written statement filed in the above Civil Suit admitted that the 150 shares transferred to Respondent No.3 returned undelivered and are detained by Respondent No.2. The Civil Judge has observed in the Suit that the CLB has exclusive jurisdiction in the matter and the plaintiff (petitioner) shall approach to CLB for relief. The petitioner stated that the Respondent No.3 is not traceable and even the Civil Court Bailiff has reported that the Respondent No.3 is not available at the address given. The Respondent No.3 has not submitted any proof of purchase of these shares by him. The petitioner requested to pass orders in terms of prayers of the petition.*

2. *The State Bank of India filed its reply and stated that the Respondent No.2 ceased to be the transfer Agent w.e.f. 30.9.2003. The SBI admitted that 150 shares*

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are transferred to Respondent No.3 as the signature of the transferor was tallied with its records and the said shares were sent to Respondent No.3 but returned undelivered. The balance 50 shares were not transferred due to signature difference of the transferor. The SBI stated that it did not receive the share certificates and transfer deeds from the petitioner. The SBI submitted that it has no objection if the matter is adjudicated by CLB against the Respondent No.3 and title to the share certificates decided in favour of the rightful person."

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"5. The Respondent No.3 in whose name 150 shares are transferred is not traceable in spite of publication of notice in the newspaper. The Respondent No.3 has not filed any reply opposing the Petition. The shares sent by SBI to Respondent No.3 were returned undelivered by postal authority. I am of the view that the Respondent No.3 is not entitled for the impugned shares. The SBI is directed to cancel the 150 shares in the name of the petitioner. The SBI is further directed to transfer the balance 50 shares which are under objection in the name of the petitioner within 30 days from the date of receipt of this order. The SBI is directed to pay dividend, if any, declared on the said shares to the petitioner. The Petition is accordingly disposed of and no order to cost."

#### **6. FINDINGS ON THE QUESTION OF 'MAINTAINABILITY':-**

Our view is summarized as per the following points:-

- a. On examination of the language of **Sub-section (c) of section 1(4) of the Companies Act, 2013, it is prescribed that the provisions of Companies Act, 2013 shall apply to Banking Companies, except in so far as the said provisions are inconsistent with the provisions of the Banking Regulation Act, 1949.** There is no limitation under the Companies Act 2013 in dealing with the shares of State Bank of India. For all intents and purposes, the provisions of SBI are akin to the provisions of Companies Act, particularly when the procedure for listing of shares, allotment of shares, issuance of shares, transfer of shares and other such procedures are involved. It is not demonstrated nor it is available in the SBI Act that for dealing with the shares a separate procedure is to be followed which is distinct or inconsistent or at

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variance or in disagreement from the procedure as laid down under the Companies Act. From the **Preamble** of SBI Act, 1955 it is evident that the purpose of enactment was for **extension of banking facilities** on a large scale to rural and semi-urban areas. There is no demarcation or exception carved out to the effect that the provisions of SBI Act shall be enforceable on any other law. To further elaborate, we have noticed that there is no provision in the SBI Act which overrides the other Statute. Generally, if an Act or Code is having overriding powers the same are specifically prescribed under that statute. In the absence of any such overriding authority granted under SBI Act, it is impractical, as also not judicial, to introduce such powers in the statute. Once the **Companies Act in Section-1(4)(c) has prescribed that its provisions apply to Banking Companies**, then it is mandatory to follow all such provisions as enshrined under the Companies Act.

- b. There is no inconsistency in the provisions of the Companies Act and in the provisions of the SBI Act. As a result, the exception of inconsistency as prescribed under Sub-section(c) of section 1(4) of Companies Act is also not applicable. Right now we are dealing with the issue of rectification of Register of Shares along with the powers of refusal of registration and have noticed that either in the Companies Act or in the SBI Act, there is similarity and definitely there is no inconsistency. Because of this reason, as well, **the Banking Companies are within the scope of the Companies Act.**
- c. Our next observation is that although under **Regulation 16 of The State Bank of India General Regulations 1955**, there is prescribed a power to refuse or suspend transfers. A question was raised that whether a remedy is available in the SBI Act? It is informed that no remedy is prescribed to the shareholder in case of unjust refusal. We have further raised a question to the representatives of the State Bank that if there any appeal or review is prescribed under SBI Act, if a shareholder is not satisfied with the decision of refusal to record the transfer of shares in the register of Members maintained by SBI? No answer is available. Obviously, there is no remedy available against the decision of refusal by the

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Executive Committee of SBI. According to us, Because of the fundamental reason that an appeal is prescribed under the Companies Act 2013, hence in the wisdom of Hon'ble Law makers there was no necessity to make identical provision of appeal in two Statutes. If in a Statute, the right of appeal is absent does not mean that the aggrieved person is remediless. Unquestionably, a shareholder is not remediless because he has been granted a **right of appeal under section 58 of the Companies Act 2013** against the refusal of registration by a Company, in the present it is SBI. In the present situation, the Petitioner had sought remedy by invoking the provisions of section 58 to be read with section 59 of the Companies Act, 2013, especially when there was no such remedy available to him under SBI Act, 1955.

- d. An important distinction has been brought to our notice. There are two connotations generally being used while a Statute is legislated or enacted. The terms are "**constituted or established**" and the other is "**governed in accordance with**". A Corporate Body may be brought into existence under any legislation, however, to be governed under Companies Act. To further elaborate a Corporate Body could have been established or incorporated by other authority may be under Central, Provincial or State Act but that Corporate Body can be registered and to be governed under another Statute, as in this case, the Companies Act. Therefore, the term "brought into existence" has altogether different connotation than the connotation "governed under or provisions of the Act apply to". In Companies Act the language of **Section 1(4) is, "the provisions of this Act shall apply to (c) banking companies .....**". The State Bank of India Act 1955 itself has marked this distinction in the Preamble itself. As per the background of the enactment of State Bank of India Act 1955, there was earlier Imperial Bank of India and the said Undertaking was transferred to the constituted State Bank of India. The language of the Preamble is, "An Act to **constitute** a State Bank of India to transfer to it the Undertaking of the Imperial Bank of India and to provide for other matter connected therewith or incidental thereto." (8<sup>th</sup> May 1955). In the Preamble it



is further notified "Whereas for the extensions of banking facilities on a large scale, more particularly in the rural and semi-urban areas, and for divers other public purposes it is expedient **to constitute a State Bank for India**, and to transfer to it the undertaking of the Imperial Bank of India and to provide for other matters connected therewith or incidental thereto;". A well-marked distinction is that a Corporate Body may or may not be created or established under the Companies Act but is governed under the Companies Act. A Corporate Body being a legal entity is to be created or established or came into existence by a Statute other than the Companies Act, however, after coming into existence is governed in accordance with the provisions of the Companies Act. It is also a possibility that a Corporate Body may owe its existence to that Statute which is the fountainhead of its existence but to be governed by Companies Act. A possibility is that a Corporate Body may not be established under the Companies Act but the provisions of the Companies Act apply to the said Corporate Body. The word "established" refers to "coming into existence" by virtue of an enactment but does not refer to "governed in accordance". To conclude, State Bank of India is established to carry on the business of Banking which is constituted by SBI Act of 1955, but to be governed under the Companies Act.

- e. Our finding on the issue of divergent view expressed vide orders of the CLB is that the order cited by the Petitioner as well as by the Respondent (SBI), both were passed by the same Learned Member of CLB viz. Mr. C.D. Paik. In one case, as quoted by the Petitioner, the SBI was directed to transfer the shares and to pay dividend to the claimant (Petitioner), however, as against that in another case, a divergent view was taken that the Petition against SBI was not maintainable. In a situation when there was no coherence in the said two judgments of CLB then this Bench deem it appropriate to take an independent view after examining exhaustively the facts as well as law, especially when the CLB is no more in existence. Vide section 466 of Companies Act, 2013 the Board of Company Law Administration constituted under the Companies Act, 1956

stood dissolved on the constitution of NCLT. As a result, this Bench is judicially authorised to take an independent view to resolve this legal controversy.

- f. This Bench has no option but to settle the controversy, especially under the circumstances when no Civil Court shall have jurisdiction to entertain any Suit in respect of any matter in which the Tribunal is empowered to determine under this Act, as prescribed under section 430 of Companies Act, 2013. Due to the introduction of **Section 430 in Companies Act, 2013**, a *bona fide* shareholder is not entitled to carry the matter before a Civil Court if not satisfied with the refusal of registration by SBI. Such a *bona fide* shareholder should not be rendered helpless. The situation is like this that : On one hand, there is no remedy available under SBI Act against the refusal of Registration and simultaneously, on the other hand, he is not entitled to agitate the claim of Registration by filing a Civil Suit before a Civil Court being debarred under section 430 of the Companies Act, 2013. The only legal remedy available to this Petitioner is to file an appeal under section 58 of the Companies Act, 2013 against refusal, which in our firm opinion rightly exercised by the Petitioner.
- g. Resultantly a conclusion is hereby drawn in the light of the foregoing discussion that the Petition is maintainable under Companies Act, 2013 and to resolve the controversy the provisions of section 58 and 59 of the Companies Act, 2013 shall apply on the merits of this case.
7. **One more legal issue** has been raised by one of the Respondent i.e. R-5 that the petition is hopelessly **barred by limitation**. It is stated in the Reply to the Petition that the Petitioner had submitted the Share Certificate for transfer to S.B.I. in the year 1996. That was refused by SBI vide letter dated 19/9/96. However this Petition is filed in the year 2015 ( on 24/3/2015 ) i.e. after a long gap of 14 years. As far as the dates are concerned there is no dispute among the parties. Admittedly this Petition is filed after 18 years from the date of lodging the claim before the S.B.I. The objection is that under the provisions of Section 58(4) of the Companies Act 2013 it is prescribed that **an appeal can be filed to the Tribunal within 60 days from the date of refusal**. The explanation of the

delay is that the Petitioner had filed a Civil Suit ( Suit No. 1173/2007) in City Civil Court, Ahmedabad pertaining to 50 shares having Registration No. 1634923 purchased from Rukmaniben Babulal ( R-3). It is also placed on record that presently a Criminal case ( Case No. 39/2007) against Jolly Champak Lal Shah (R-5) in Magistrate Court, Ahmedabad is pending. **The Petitioner was not sleeping over his rights.** By referring **Section 14 of the "Limitation Act 1963"** it is argued that while computing the period of limitation the time during which another proceedings are pending are to be excluded. In the case of **Rajkumar Shivhare Vs. Union of India in Civil Application No.169 of 2010 order dated 05/06 July 2007 Hon'ble Bombay High Court** (oral judgment per Hon'ble Dr. D.Y. Chandrachud, J ) **held** that the Statute has unequivocally spelt out its intent that although the period of limitation is prescribed but the Code is vested with the jurisdiction **to exclude the period of litigation pending before any Court of Law.** It is prescribed to afford protection to a vigilant Litigant. Naturally, this exception under the Limitation Act is to advance the Cause of Justice rather than to abort the legally permissible remedy. On that ground a Petition cannot be thrown out of litigation at the very inception.

Moreover, and most importantly, when the claim was lodged before State Bank of India or the Civil/Criminal cases were filed, at that point of time, the Companies Act 1956 was applicable and **under the old Act there was no such limitation of time for filing an Appeal was prescribed.** The argument of the Learned Counsel of the Petitioner is that under the old section **111A of Companies Act 1956** it was prescribed that on an Application made by investor, if the registration of shares is not incorporated within two months from the date of the transfer or from the date on which the instrument of transfer is executed, an Appeal can be filed. Therefore, the limitation was qua rectification in the register, but not qua the filing of an Appeal under the Old Act. This distinction is very well recorded by the **Hon'ble Calcutta High Court in the case of Peerless General Finance and Investment Co. Ltd. Vs. Poddar Project**

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**Ltd. (2008) 81 SCL 51 (Cal).** It is held that "the provisions of section 111A did not put any time restriction on approaching the Company Law Board"..... Further held "The proviso to sub-section (2) and (3) of section 111A stipulate that if a company, without sufficient cause refused to register the transfer within two months from the date of lodgement, the transferee may approach the tribunal for relief.". As a consequence, we are of the considered view that on this technical ground, specially when the matter related to the period when the provisions of Companies Act 2013 were not applicable, it is unfair, unlawful and unjustifiable to throw this vigilant Petitioner out of the litigation at the very threshold without granting him an opportunity of hearing which otherwise is his one of the judicial rights.

8. **MERITS & FACTS :** ---- Once we have held that the issue can be proceeded against SBI, as a consequence, merits of the case are required to be discussed hereafter. It is informed that **Respondent No.2 is a share transfer Agent, Respondent No. 3, 4, 5 and 6 are the registered shareholders.** The petitioner has moved this Petition for obtaining the direction to get 200 shares transferred in his name along with corporate benefits such as entitlement on bonus shares etc. At this juncture at the outset it is worth to place on record that the Applicant had submitted the claim before the SBI only in respect of 50 shares having Certificate No.871509 (distinctive No.294924101 to 294924150). These 50 shares were stated to be purchased from Mr. Jolly Champaklal Shah (R-5). The controversy was due to mismatch of signature of the transferor on Transfer Deed. The Petitioner had written a letter on 19-10-1996 to share broker Shri Chiubhai Shah intimating the mismatch of signatures with a request to remove the objection and return the Transfer Deeds. No reply was received from transferors or their Agent. Thereafter Petitioner had written a letter to Datamatic Constultants (R-2) an assignee of State Bank of India (R-1) requesting for "Stop Transfer". To put the facts straight, the State Bank of India's Representative has informed that Public Issue was floated by the Bank in the year 1994. At that time M/s. MCS Limited was appointed as Registrar and Transfer Agent to handle the Public Issue. Later

on M/s. MCS Limited ceased to be the Registrar with effect from 30<sup>th</sup> September 2003. In his place Respondent No.2 M/s. Datamatics Financial Services was appointed as Registrar and Share Transfer Agent with effect from 1<sup>st</sup> October 2003.

- 8.1 The Petitioner had also filed a civil suit (No.1173/2007) in the Civil City Court, Ahmedabad for Share Certificate bearing No.1634923 for 50 shares standing in the name of Rukmaniben Babulal, seeking injunction restraining Respondent No.1 Bank from transferring the impugned shares. The claim of the Petitioner is that full amount was paid hence he is a bona fide purchaser of shares. It has also been stated that original share certificates are in lawful possession of the Petitioner. In support of the claim of purchase Transfer Deed and connected evidences are annexed with the Petition. Respective Share Transfer Forms are also on records, however, the last transaction was stated to be a bad delivery.
- 8.2 Further, our attention has been drawn on a letter of 27<sup>th</sup> September 2005 written by Datamatics Financial Software and Services Limited (R-2) addressed to the Petitioner having subject "Stop Transfer of Shares under section 108 of Companies Act, 1956" Ledger Folio No.2541954 for 50 shares, Certificate No.1634923; Distinctive Nos.333094801-850 for 50 shares intimating therein that those shares were purchased from the market. Further intimated that the Original Share Certificate was returned back to the Petitioner due to signature difference. It has also been intimated that those Share Certificates were registered as holder of the Share Certificates in the name of Rukmaniben Babulal, Ahmedabad. It was demanded from the Petitioner to submit certain information and Purchase Bill, Date of Broker from whom Shares were purchased, etc. so as to enable the Bank to remove the "Stop mark". It was demanded to place on record the certified copy of Purchase Bill. It is interesting to note that the claim was made only in respect of 50 shares as per the details available.
- 8.3 It is also interesting to note that in Criminal Case No.39/2007 submitted before Magistrate Court No.22 of Ahmedabad, the Complainant/Petitioner has also complained in respect of 50 shares of State Bank of India bearing Certificate No.871509 and distinctive No.294924101 to 294924150.

8.4 In the light of the above discussion and considering the sequence of events we have found that only 100 shares were lodged before State Bank of India to record the Transfer and not 200 shares. In the absence of any evidence that rest of the 100 shares have also been lodged for transfer in SBI record we are not inclined to pass any order. Definitely it is not permissible under law to adjudicate on an issue which has not been raised by proper lodgement. At the cost of repetition, the correspondence placed before us has demonstrated only in respect of 100 shares, the distinctive numbers etc. already made clear in this Judgment. Even in the reply filed by the Datamatics Financial Services (R-2) vide para 6 it is acknowledged that only 100 Share Certificates were lodged and put a Stop Mark and not for rest of the shares. Para 6 is reproduced below:-

*"6. With reference to para 8 of the petition, it is respectfully submitted that the Petitioner had lodged only two certificates (i.e. 100 shares) – i) share certificate No. 1634923 bearing distinctive Nos.33094801 to 33094850 in the year 2002 and ii) share certificate No. 386109 bearing distinctive Nos. 270654101 to 270654150 in the year 2011 for transfer in his name, but because the transferor's signature in the relevant transfer applications being different, the said certificates were returned under objections to the Petitioner. As such, the contentions of the Petitioner that the shares wrongly exist in name of Respondent Nos. 3 to 6 are denied. Further, it is respectfully submitted that since the Petitioner has submitted the transfer applications for only 100 shares out of 200 shares as stated in plaint, the provisions of Section 58 (4) and 59 of Companies Act, 2013 will not be applicable to balance 100 shares as it has not been submitted by the Petitioner to the Respondent No. 2 for transfer in his name."*

8.5 Few Respondents mainly Respondent No.5 has stated in the Affidavit in Reply that the shares were lost by him and the claimant Petitioner is not a bona fide person to lodge the claim in SBI records. A question has been raised that if the shares

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were lost then why a Police Complaint or FIR was not lodged?. Otherwise also, there is no corroborative evidence in support of the alleged claim of loss of shares. In the absence of any substantial proof we are not persuaded by this argument of the Respondent.

9. In the light of the above discussion we hereby conclude that this Petition is maintainable against the State Bank of India as per the in-depth discussion made hereinabove and that the question of Limitation in respect of the impugned transaction in question is concerned do not apply because the transaction has happened at the period when the Old Companies Act, 1956 was in operation. However, the Petition filed against State Bank of India revolves around the lodging of claim in respect of only 100 shares as per the specifications *supra* and not in respect of total 200 shares. As a result, our Order is confined to those 100 shares only, details as per *supra*, which were lodged for transfer in the prescribed record by the State Bank of India. The Petition is therefore, partly allowed. Disposed of accordingly, to be consigned to Records.

Sd/-

**BHASKARA PANTULA MOHAN**  
Member (Judicial)

Date : 04.11.2017

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Sd/-

**M.K. SHRAWAT**  
Member (Judicial)